

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5
6 IN RE: NATIONAL : MDL NO. 2804
7 PRESCRIPTION OPIATE :
8 LITIGATION :
9 :
10 :

11 -----
12 THIS DOCUMENT RELATES TO : CASE NO.
13 ALL CASES : 1:17-MD-2804
14 :
15 : Hon. Dan A.
16 : Polster

17 - - -

18 January 31, 2019

19 - - -

20 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
21 CONFIDENTIALITY REVIEW

22 Videotaped deposition of JANET
23 GETZEY HART taken pursuant to notice, was held at
24 the law offices of Morgan, Lewis & Bockius LLP,
25 1701 Market Street, Philadelphia, Pennsylvania,
26 beginning at 9:38 a.m., on the above date, before
27 Ann Marie Mitchell, a Federally Approved
28 Certified Realtime Reporter, Registered Diplomat
29 Reporter, Registered Merit Reporter and Notary
30 Public.

31 - - -

32 GOLKOW LITIGATION SERVICES
33 877.370.3377 ph | 917.591.5672 fax
34 deps@golkow.com

| Page 2 | Page 4 |
|--|--|
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| Page 3 | Page 5 |
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| <p style="text-align: right;">Page 10</p> <p>1 THE VIDEOGRAPHER: We're now on 2 the record. My name is David Lane, 3 videographer from Golkow Litigation 4 Services. Today's date is January 31, 5 2019. Our time is 9:38 a.m. This 6 deposition is taking place in 7 Philadelphia, Pennsylvania in the matter 8 of National Opiate Litigation, MDL. 9 Our deponent today is Janet 10 Getzey Hart. Counsel will be noted on 11 the stenographic record. Our court 12 reporter is Ann Marie Mitchell. 13 Ms. Hart, I just want to remind 14 you, you're still under oath. 15 MR. PIFKO: Can we get people on 16 the phone to just state their name and 17 firm and who they represent real quick? 18 MS. LIABO: Hi, this is Miriam 19 Liabo from Jones Day on behalf of 20 Walmart. 21 MS. McENROE: Anybody else? 22 MS. WATSON: This is Sylvia 23 Watson from Jackson Kelly on behalf of 24 AmeriSource Bergen.</p> | <p style="text-align: right;">Page 12</p> <p>1 Q. So you understand that you're 2 still under oath? Do you understand that? 3 A. Yes. 4 Q. Okay. Yes? Sorry, I spoke over 5 you. 6 A. Yes, yes. 7 Q. And we'll fast forward through a 8 bunch of the ground rules. I know we covered 9 that yesterday and had your deposition taken. 10 So you understand that your 11 testimony here today is under penalty of perjury. 12 Correct? 13 MS. McENROE: Objection to form. 14 THE WITNESS: I do. 15 BY MR. PIFKO: 16 Q. And you understand that if you're 17 untruthful or intentionally dishonest in some 18 way, that you could be subject to criminal 19 penalties or civil penalties or some other sort 20 of punishment from the court. 21 Do you understand that? 22 MS. McENROE: Objection to form. 23 THE WITNESS: I do. 24 BY MR. PIFKO:</p> |
| <p style="text-align: right;">Page 11</p> <p>1 MR. PIFKO: Anyone else? 2 MR. MALOY: This is John Maloy 3 from Morgan Lewis on behalf of Rite Aid. 4 MR. PIFKO: Anyone else? 5 - - - 6 JANET GETZEY HART, after having 7 been previously duly sworn, continued to 8 be examined and testified as follows: 9 - - - 10 EXAMINATION 11 - - - 12 BY MR. PIFKO: 13 Q. All right. Now that we got that 14 out of the way. 15 My name is Mark Pifko. We kind 16 of met yesterday a little bit. I'm going to be 17 asking you some questions today. I represent the 18 plaintiffs in the litigation. 19 MR. PIFKO: So -- was she 20 administered the oath? 21 THE REPORTER: She's still under 22 oath from yesterday. 23 MR. PIFKO: Okay. 24 BY MR. PIFKO:</p> | <p style="text-align: right;">Page 13</p> <p>1 Q. Is there any reason why you can't 2 provide truthful and accurate testimony today? 3 A. There is not. 4 Q. Do you have any medical 5 condition, are you taking any medication or 6 undergoing any sort of treatment that would 7 impact your ability to tell the truth? 8 A. No. 9 Q. Are you taking any medication or 10 suffering from any condition that would impact 11 your memory? 12 A. No. 13 Q. From time to time, I'm obviously 14 going to be asking you, as you know from 15 yesterday, about past events. Okay? And I don't 16 want you to guess, but I do -- I am entitled to 17 your best recollection of events. Okay? 18 A. Yes. 19 Q. Okay. You intend to provide that 20 today? 21 A. I do. 22 Q. All right. So one other thing 23 that's different today, we'll get into it in just 24 a moment, as opposed to yesterday, is that</p> |

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1 today's deposition, you are providing testimony
 2 on behalf of the company.
 3 Do you understand that?
 4 A. I do.
 5 Q. Okay. So when I ask you
 6 questions -- I'm going to hand you a notice in a
 7 minute and there's some topics.
 8 When I ask you questions within
 9 those topics, you're going to be providing
 10 testimony on behalf of the company, not just you.
 11 Do you understand that?
 12 A. I do.
 13 Q. All right. Let's start by
 14 handing you that document. I'm sure that you saw
 15 it in preparing for today's deposition.
 16 - - -
 17 (Deposition Exhibit No.
 18 Hart-30(b)(6)-1, Second Notice of
 19 Deposition Pursuant to Rule 30(B)(6) and
 20 Document Request Pursuant to Rule
 21 30(B)(2) and Rule 34 to Defendant Rite
 22 Aid of Maryland, Inc., d/b/a Rite Aid and
 23 Mid-Atlantic Customer Support Center,
 24 Inc., was marked for identification.)

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1 - - -
 2 BY MR. PIFKO:
 3 Q. I'm handing you what's marked as
 4 Hart-30(b)(6) Exhibit 1, which is a copy of a
 5 deposition notice.
 6 Have you seen this before? Take
 7 a minute to look at it.
 8 MS. McENROE: Mark, if it would
 9 help, I'm happy to stipulate to which
 10 topics from the second notice --
 11 MR. PIFKO: Yeah, I'm going to
 12 ask her. I have got your letter in front
 13 of me.
 14 MS. McENROE: Great. Thank you.
 15 THE WITNESS: I'm fine.
 16 BY MR. PIFKO:
 17 Q. All right. Have you seen this
 18 before?
 19 A. I have.
 20 Q. When was the last time you saw
 21 this?
 22 A. Within the past few days.
 23 Q. Okay. When was the first time
 24 you recall seeing this?

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1 A. Months ago.
 2 Q. Sometime in the third quarter of
 3 last year?
 4 A. Seems familiar, yes.
 5 Q. So you see if you -- there's
 6 numbered pages on the bottom.
 7 If you turn to the page that's
 8 numbered 6, it's got "Subject Matters for
 9 Testimony," letters A through O.
 10 Do you see that?
 11 MS. McENROE: I think you may be
 12 looking at notice 1 and you may have
 13 handed us notice 2. That may be what's
 14 going on.
 15 The second notice is the one that
 16 you handed us.
 17 MR. PIFKO: That's Will's fault.
 18 We can hand her both of them.
 19 I'll ask you some questions about that.
 20 I'll hand you notice 1 in just a
 21 minute. Thanks for clarifying.
 22 BY MR. PIFKO:
 23 Q. So with respect to notice 2, you
 24 see that there's topics that start on -- well,

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1 they do the same thing. They start on page 6
 2 here.
 3 Do you see that?
 4 A. I do.
 5 Q. Okay. And they go through page
 6 11.
 7 Do you see that?
 8 A. I do.
 9 Q. So looking at this -- this is
 10 called the second notice.
 11 Do you understand yourself to be
 12 designated for topics 6, 12, 17, 18, 20, 21 and
 13 22?
 14 A. 6, 12 -- what were the other
 15 numbers?
 16 Q. 17, 18, 20, 21 and 22.
 17 MS. McENROE: Just preserving for
 18 the record that 20, 21 and 22 are as
 19 modified by a ruling from Special Master
 20 Cohen.
 21 THE WITNESS: I do.
 22 BY MR. PIFKO:
 23 Q. Is there any reason why you can't
 24 provide testimony on those topics today?

| | |
|---|--|
| <p style="text-align: right;">Page 18</p> <p>1 A. There is not.</p> <p>2 Q. Let's look at the first notice.</p> <p>3 - - -</p> <p>4 (Deposition Exhibit No.</p> <p>5 Hart-30(b)(6)-2, First Notice of</p> <p>6 Deposition Pursuant to Rule 30(B)(6) and</p> <p>7 Document Request Pursuant to Rule</p> <p>8 30(B)(2) and Rule 34 to Defendant Rite</p> <p>9 Aid of Maryland, Inc., d/b/a Rite Aid and</p> <p>10 Mid-Atlantic Customer Support Center,</p> <p>11 Inc., was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Which is marked as Exhibit 2.</p> <p>15 Take a moment to review that and</p> <p>16 let me know when you're done.</p> <p>17 A. (Reviewing document.)</p> <p>18 Okay.</p> <p>19 Q. Have you seen Exhibit 2 before?</p> <p>20 A. I have.</p> <p>21 Q. When was the last time you saw</p> <p>22 Exhibit 2?</p> <p>23 A. Within the past few days.</p> <p>24 Q. When was the first time you</p> | <p style="text-align: right;">Page 20</p> <p>1 would have been around a few months ago, like the</p> <p>2 other notice, roughly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. If you turn to page 6 of</p> <p>5 Exhibit 2, you see there's a bunch of letter</p> <p>6 topics that goes from page 6 to page 7.</p> <p>7 Are you there?</p> <p>8 A. I am.</p> <p>9 Q. Do you understand yourself to be</p> <p>10 designated to speak on behalf of the company with</p> <p>11 respect to topics A through N?</p> <p>12 Take a minute to look at them.</p> <p>13 A. I do.</p> <p>14 Q. Is there any reason why you can't</p> <p>15 provide testimony on behalf of the company with</p> <p>16 respect to topics A through N in Exhibit 2?</p> <p>17 A. There is not.</p> <p>18 Q. Do you know what diversion is?</p> <p>19 MS. McENROE: Objection to form.</p> <p>20 THE WITNESS: I do.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. What's your understanding of what</p> <p>23 diversion is?</p> <p>24 A. Diversion is any time that a</p> |
| <p style="text-align: right;">Page 19</p> <p>1 believe you saw Exhibit 2?</p> <p>2 A. I don't remember when I first saw</p> <p>3 it.</p> <p>4 Q. Do you believe it would have been</p> <p>5 on or around the same time you saw Exhibit 1?</p> <p>6 A. A little after. Oh, this one</p> <p>7 here is Exhibit 1 that we're talking about now?</p> <p>8 Q. I'm asking about Exhibit 2.</p> <p>9 A. Okay. Exhibit 2 is the first</p> <p>10 notice, though. Right?</p> <p>11 Q. Right.</p> <p>12 A. So I would have saw the first</p> <p>13 notice before the second notice.</p> <p>14 Q. Okay. That's your recollection,</p> <p>15 is that you saw the first one before you saw the</p> <p>16 second one?</p> <p>17 A. I believe so.</p> <p>18 Q. Just so you know, they're dated</p> <p>19 the same day.</p> <p>20 Does that refresh your</p> <p>21 recollection at all about when you saw them?</p> <p>22 A. It does not.</p> <p>23 Q. Okay. All right. Well, you see</p> <p>24 on page 6 -- well, so you believe, though, it</p> | <p style="text-align: right;">Page 21</p> <p>1 controlled substance gets out of the normal</p> <p>2 channel of controlled substance delivery to a</p> <p>3 patient, not to the patient based upon a valid</p> <p>4 medical intent.</p> <p>5 Q. Do you understand that Rite Aid</p> <p>6 has a duty to prevent diversion?</p> <p>7 MS. McENROE: Objection, calls</p> <p>8 for a legal conclusion.</p> <p>9 THE WITNESS: I do.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. Do you understand that during</p> <p>12 certain relevant time periods to this case, Rite</p> <p>13 Aid was a, what's called a distributor under the</p> <p>14 Controlled Substances Act?</p> <p>15 A. I do.</p> <p>16 Q. What's your understanding of how</p> <p>17 Rite Aid fit into a definition of a distributor</p> <p>18 under the Controlled Substances Act?</p> <p>19 MS. McENROE: Objection to form.</p> <p>20 THE WITNESS: Rite Aid</p> <p>21 distributed its Schedule III, IV and V</p> <p>22 controlled substances to our various Rite</p> <p>23 Aid locations.</p> <p>24 BY MR. PIFKO:</p> |

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1 Q. And Rite Aid purchased those
2 products directly from manufacturers?
3 A. I believe so, yes.
4 Q. And then warehoused them and
5 ultimately shipped them to its stores?
6 A. That is correct.
7 Q. And so you understand as a
8 distributor that Rite Aid had a duty to prevent
9 diversion. Correct?
10 MS. McENROE: Objection to form.
11 THE WITNESS: I do.
12 BY MR. PIFKO:
13 Q. And do you also have an
14 understanding that Rite Aid had a duty to
15 identify, report and halt the shipment of
16 suspicious orders?
17 MS. McENROE: Objection to form.
18 THE WITNESS: I do.
19 BY MR. PIFKO:
20 Q. Okay. And do you know what a
21 suspicious order is?
22 A. I do.
23 Q. What is a suspicious order?
24 A. A suspicious order is an unusual

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1 frequency, an unusual pattern, orders of that
2 nature.
3 Q. Bear with me a second here.
4 Do you understand the purpose for
5 which Rite Aid, as a registrant under the
6 Controlled Substances Act, has a duty to prevent
7 diversion?
8 MS. McENROE: Objection to form.
9 THE WITNESS: I do.
10 BY MR. PIFKO:
11 Q. What's your understanding of what
12 that purpose is?
13 A. Our purpose is to make sure the
14 controlled substances are kept in the normal
15 channel of distribution and dispensing to the end
16 patient, make sure that it does not end in the
17 hands of any other one that's not in that
18 distribution channel.
19 Q. Do you understand that one of the
20 purposes of preventing diversion is to protect
21 the public health?
22 MS. McENROE: Objection to form.
23 THE WITNESS: I do.
24 BY MR. PIFKO:

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1 Q. And is that consistent with Rite
2 Aid's understanding of why we want to prevent
3 diversion?
4 A. It is.
5 Q. I believe -- I was just looking
6 for it, but I couldn't find it, but I believe
7 that's in one of Rite Aid's policy documents.
8 Do you recall seeing that?
9 A. I do.
10 Q. So you agree that that's a stated
11 policy of Rite Aid, is that they want to prevent
12 diversion because they want to protect the public
13 health. Correct?
14 MS. McENROE: Objection to form.
15 THE WITNESS: I'm not sure if
16 it's part of a policy or a statement or
17 whatever, but yes.
18 BY MR. PIFKO:
19 Q. All right. You understand that
20 Rite Aid has a duty to -- we talked earlier, to
21 identify, report and halt the shipment of any
22 suspicious orders that it may find in its system.
23 Correct?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: I do.
2 BY MR. PIFKO:
3 Q. And did you also understand that
4 Rite Aid has a duty to design a system to
5 identify suspicious orders. Correct?
6 MS. McENROE: Objection to form.
7 And Mark, this is pretty heavily on the
8 legal interpretation end, from which
9 Special Master Cohen specifically ruled
10 the topics do not cover, despite how
11 they're drafted. So I just wanted to
12 make sure that we don't go too far down
13 that road.
14 THE WITNESS: Could you repeat
15 the question?
16 BY MR. PIFKO:
17 Q. Yeah.
18 I was just asking, you understand
19 that Rite Aid has a duty to design and maintain a
20 system to identify and report suspicious orders.
21 Correct?
22 MS. McENROE: Objection to form.
23 THE WITNESS: I do.
24 BY MR. PIFKO:

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1 Q. Did Rite Aid have such a system?
 2 A. We did.
 3 Q. When did Rite Aid first design a
 4 system to identify and report and halt the
 5 shipment of suspicious orders?
 6 A. I came into the Rite Aid
 7 corporate office in 1995. And at that point
 8 there was a program to report suspicious orders.
 9 Q. How about a program to identify
 10 suspicious orders?
 11 A. I think same time.
 12 Q. Do you know anything about who
 13 designed the system that you're describing to
 14 identify and report suspicious orders?
 15 A. I do not.
 16 Q. Okay. But it's your testimony
 17 that that system was in place in 1995?
 18 A. Yes.
 19 Q. Were there any changes to that
 20 system? You've been employed by, we discussed
 21 yesterday, by Rite Aid since the '80s; is that
 22 correct?
 23 MS. McENROE: Objection to form.
 24 THE WITNESS: Yes.

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1 MS. McENROE: It's okay. Give me
 2 time to get my objections in.
 3 BY MR. PIFKO:
 4 Q. So you're familiar with Rite
 5 Aid's policies and procedures with respect to
 6 suspicious orders and preventing diversion.
 7 Correct?
 8 A. Yes.
 9 Q. And are you familiar with whether
 10 there are any changes to Rite Aid's system to
 11 identify and report suspicious orders from 1995
 12 to present?
 13 A. I believe that the system itself
 14 has been in place. There has been minor changes
 15 or tweaks along the way, but the basics of the
 16 system have remained the same.
 17 Q. To your knowledge, has Rite Aid
 18 ever identified a suspicious order?
 19 A. We have not.
 20 Q. Do you believe that there's never
 21 been a suspicious order that's occurred within
 22 Rite Aid's distribution system?
 23 MS. McENROE: Objection to form.
 24 THE WITNESS: Could you repeat

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1 the question?
 2 BY MR. PIFKO:
 3 Q. Yeah.
 4 Do you believe that there's never
 5 been a suspicious order that has occurred within
 6 Rite Aid's distribution center -- system?
 7 MS. McENROE: Objection to form.
 8 THE WITNESS: I do.
 9 BY MR. PIFKO:
 10 Q. So it's your testimony that
 11 there's never been a suspicious order that's
 12 occurred within Rite Aid's distribution of
 13 Schedule III controlled substances?
 14 MS. McENROE: Objection to form.
 15 THE WITNESS: I do.
 16 BY MR. PIFKO:
 17 Q. Are you familiar with the
 18 scheduling of controlled substances?
 19 A. I am.
 20 Q. Are you aware of -- that there's
 21 Schedule I through VI?
 22 A. Schedule I through V.
 23 Q. I'm sorry, I through V, yes.
 24 A. Yes.

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1 Q. Okay. Keeping you on your toes.
 2 Do you have an understanding
 3 about what the differences are as you move along
 4 the schedules?
 5 A. I do.
 6 MS. McENROE: Objection to form.
 7 BY MR. PIFKO:
 8 Q. From I to V?
 9 MS. McENROE: Objection to form.
 10 THE WITNESS: I do.
 11 BY MR. PIFKO:
 12 Q. What is your understanding of the
 13 difference between a Schedule I controlled
 14 substance and a Schedule V controlled substance?
 15 MS. McENROE: Just real quick, I
 16 want to make sure I understand.
 17 Which topic is this part of?
 18 MR. PIFKO: I'm asking the
 19 questions. I don't need to identify the
 20 topics.
 21 MS. McENROE: I understand. So
 22 you're asking topics from a 30(b)(6)
 23 witness designated for specific
 24 testimony.

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1 MR. PIFKO: You can object to
2 scope, but I'm going to ask the
3 questions.
4 MS. McENROE: I can object to
5 scope. I'm just trying to understand
6 where you're going with this, so --
7 MR. PIFKO: I'm asking her
8 questions.
9 MS. McENROE: -- if you're just
10 laying the basis for something in scope,
11 then that's fine, Mark. But I just want
12 to make sure that we're not going to
13 spend all day, she's a talented
14 pharmacist with a lot of experience,
15 getting every dot of the Controlled
16 Substances Act, make sure that we're
17 staying within the nature of the topics.
18 So that all being said, I will
19 say objection to scope.
20 BY MR. PIFKO:
21 Q. All right. So let's go back to
22 my question.
23 Do you understand the difference
24 between a Schedule I substance and a Schedule V

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1 substance?
2 MS. McENROE: Objection to form.
3 THE WITNESS: I do.
4 BY MR. PIFKO:
5 Q. What is your understanding of the
6 difference between those substances, as you move
7 through the scale?
8 A. Schedule I has an abusive -- has
9 the most abusive properties. They are typically
10 the illicit drugs. Schedule V is the least
11 addictive, and they are the products that may be
12 able to be sold over the counter.
13 Q. And so as you moved down the
14 scale, there's -- all these substances have been
15 identified by the government as having a
16 potential for abuse. Correct?
17 MS. McENROE: Objection to form.
18 THE WITNESS: Abuse, addiction,
19 yes.
20 BY MR. PIFKO:
21 Q. And as you move down the scale,
22 there's a lower potential for abuse and
23 addiction; is that correct?
24 A. As you go to Schedule V, there is

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1 less potential for that, yes.
2 Q. And Rite Aid was a distributor of
3 Schedule III controlled substances. Correct?
4 MS. McENROE: Objection to form.
5 THE WITNESS: We were.
6 BY MR. PIFKO:
7 Q. But you also sold Schedule II
8 controlled substances. Correct?
9 MS. McENROE: Objection to form.
10 I just want to make sure we are
11 clear in which "you" we are using here.
12 So she is here testifying as a 30(b)(6)
13 witness for Rite Aid Maryland, Inc.,
14 doing business as Mid-Atlantic Customer
15 Support Center, which is the Perryman
16 Distribution Center. So I just want to
17 make sure the witness is not going to be
18 getting confused or misled that it's her
19 personally or the Rite Aid family of
20 companies.
21 BY MR. PIFKO:
22 Q. You understand that Rite Aid
23 Corporation operates pharmacies, correct, through
24 its various subsidiaries?

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1 A. I do.
2 Q. And those pharmacies sell
3 Schedule II substances. Correct?
4 A. Those pharmacies dispense
5 Schedule II controlled substances.
6 Q. And they also sell Schedule III
7 substances. Correct?
8 A. Yes.
9 Q. So we talked about the system for
10 identifying, reporting and halting the shipments
11 of suspicious orders.
12 You said that there was a system
13 in place in 1995. Correct?
14 A. Yes.
15 Q. And then I asked you if there
16 were changes over the years. And you said there
17 might have been some little changes, but the
18 basic functions of the system have been the same;
19 is that correct?
20 A. That is correct.
21 Q. All right. So can you tell me
22 what are the basic functions or features of the
23 Rite Aid system to identify, report and halt the
24 shipment of suspicious orders?

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1 MS. McENROE: Objection to form.
 2 THE WITNESS: I can.
 3 BY MR. PIFKO:
 4 Q. All right. Let's start with the
 5 first element of Rite Aid's system.
 6 And let's talk about what was in
 7 place in 1995, and then we'll move through and
 8 talk about any potential changes. Okay?
 9 MS. McENROE: Objection in terms
 10 of scope of the time period. Discovery
 11 starts in this case in 2006 for the
 12 relevant purposes. So I know the witness
 13 said that she started in this role in
 14 1995, but I just want to make sure we
 15 don't end up spending all day on portions
 16 of discovery that are not even within
 17 scope.
 18 BY MR. PIFKO:
 19 Q. Do you recall my question?
 20 A. Please repeat it.
 21 Q. All right.
 22 MR. PIFKO: Do you recall Special
 23 Master Cohen ordered objections to stay
 24 under 10 seconds, so let's try to

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1 remember that rule.
 2 MS. McENROE: I talk real fast.
 3 I think it was under 10 seconds.
 4 MR. PIFKO: All right.
 5 BY MR. PIFKO:
 6 Q. What I asked you was to identify
 7 the features of Rite Aid's system to identify,
 8 report and halt the shipment of suspicious
 9 orders. Okay?
 10 A. Okay.
 11 Q. And what we talked about is you
 12 said you're familiar with the system that was in
 13 place from 1995 until present. Correct?
 14 A. Correct.
 15 Q. Okay. And so what I want you to
 16 do is start with the features of the system that
 17 you're familiar with from the earliest time frame
 18 from which you're familiar, which you said was
 19 1995. Correct?
 20 A. Correct.
 21 Q. And then we'll go through various
 22 changes that may have occurred over the years.
 23 So let's start in 1995, what's
 24 the first step in Rite Aid's system to identify,

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1 report and halt the shipment of suspicious
 2 orders?
 3 MS. McENROE: Objection to form.
 4 Yeah. We're here giving 30(b)(6)
 5 testimony on behalf of the distribution
 6 center that I mentioned earlier. You
 7 know, in terms of -- that distribution
 8 center wasn't even in existence in 1997,
 9 Mark. So I'm worried that we're really
 10 going far afield here on a number of
 11 different avenues.
 12 BY MR. PIFKO:
 13 Q. Can you answer the question?
 14 MS. McENROE: Objection on
 15 multiple grounds.
 16 THE WITNESS: I can.
 17 BY MR. PIFKO:
 18 Q. Okay. So let's start.
 19 What was the first feature of the
 20 system?
 21 A. The Rite Aid suspicious order
 22 monitoring program had various features to it.
 23 One of the features was a threshold quantity of
 24 5,000 dosage units for any single NDC, National

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1 Drug Code, product per order.
 2 Q. Do you know how that threshold
 3 was calculated?
 4 A. As far as how was it established?
 5 Q. Right.
 6 A. I do not know.
 7 Q. Do you know why 5,000 was picked?
 8 A. I do not know.
 9 Q. Throughout the entirety of your
 10 knowledge, that threshold was the same. Correct?
 11 A. That threshold remained the same
 12 until we stopped distributing controlled
 13 substances in 2014.
 14 Q. So from 1995 to 2014, the
 15 threshold was always 5,000 dosage units per NDC?
 16 MS. McENROE: Objection to form.
 17 BY MR. PIFKO:
 18 Q. Per week? Per order? Sorry.
 19 A. That is correct.
 20 Q. And what was the same threshold
 21 at all stores, with a handful of exceptions.
 22 Correct?
 23 MS. McENROE: Objection to form.
 24 THE WITNESS: That is correct.

| | |
|--|--|
| <p style="text-align: right;">Page 38</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you know approximately how</p> <p>3 many stores had exceptions to that threshold?</p> <p>4 A. My guess would be less than a</p> <p>5 dozen.</p> <p>6 Q. Can you name them?</p> <p>7 A. I can name a few. Rite Aid 777.</p> <p>8 I believe Rite Aid number 408. Those are the two</p> <p>9 that I remember.</p> <p>10 Q. Do you know where those are</p> <p>11 located? How about 777, where is that located?</p> <p>12 A. It was located in New Jersey.</p> <p>13 Q. How about 408?</p> <p>14 A. I don't know where that one is</p> <p>15 located.</p> <p>16 Q. You can't recall any others?</p> <p>17 A. There were others with</p> <p>18 exceptions. I believe yesterday we discussed</p> <p>19 3151.</p> <p>20 Q. Do you know where that store is</p> <p>21 located?</p> <p>22 A. Ohio.</p> <p>23 Q. Do you know where in Ohio?</p> <p>24 A. I believe Akron.</p> | <p style="text-align: right;">Page 40</p> <p>1 A. I don't recall being a part of</p> <p>2 those discussions.</p> <p>3 Q. Do you know what the nature of</p> <p>4 those discussions were with the logistics team to</p> <p>5 change those numbers?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 THE WITNESS: I do not.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Do you know why they were having</p> <p>10 such discussions?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 THE WITNESS: I think part of it</p> <p>13 always to look at the program and</p> <p>14 determine if it's adequate or not.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And was at some point someone was</p> <p>17 concerned that it wasn't adequate?</p> <p>18 MS. McENROE: Objection to form.</p> <p>19 THE WITNESS: No. I did not say</p> <p>20 that. I said they were looking at it to</p> <p>21 continue to make sure that it was</p> <p>22 adequate.</p> <p>23 - - -</p> <p>24 (Deposition Exhibit No.</p> |
| <p style="text-align: right;">Page 39</p> <p>1 Q. Any others?</p> <p>2 A. Those are the ones that I</p> <p>3 remember.</p> <p>4 Q. So that's a feature of Rite Aid's</p> <p>5 suspicious order monitoring system. And that</p> <p>6 feature has been the same over the entirety of</p> <p>7 your knowledge up to and including 2014, when you</p> <p>8 stopped distributing Schedule III controlled</p> <p>9 substances. Correct?</p> <p>10 MS. McENROE: Objection to the</p> <p>11 form.</p> <p>12 THE WITNESS: To the best of my</p> <p>13 knowledge, yes.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Were there ever any discussions</p> <p>16 about changing that number?</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 THE WITNESS: I don't recall any</p> <p>19 discussions. There may have been</p> <p>20 discussions within the logistics team to</p> <p>21 change the number.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Were you part of any of those</p> <p>24 discussions?</p> | <p style="text-align: right;">Page 41</p> <p>1 Hart-30(b)(6)-3, Email chain, top one</p> <p>2 dated 2010-11-24, Bates stamped</p> <p>3 Rite_Aid_OMDL_0046695, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. I'm handing you what's marked as</p> <p>8 Exhibit 3.</p> <p>9 For the record, Exhibit 3 is a</p> <p>10 single page document Bates labeled</p> <p>11 Rite_Aid_OMDL_0046695.</p> <p>12 Let me know -- take a minute to</p> <p>13 review that and let me know when you're done.</p> <p>14 A. (Reviewing document.)</p> <p>15 Q. Are you ready?</p> <p>16 A. I'm ready.</p> <p>17 Q. Have you seen this before?</p> <p>18 A. I have.</p> <p>19 Q. When was the last time you saw</p> <p>20 this?</p> <p>21 A. Within the past few days.</p> <p>22 Q. Is this something you reviewed in</p> <p>23 preparing for your 30(b)(6) deposition?</p> <p>24 A. Yes.</p> |

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1 Q. In preparing for the 30(b)(6)
2 deposition, did you discuss this document with
3 anyone from the company?
4 A. From Rite Aid?
5 Q. Yes.
6 A. I did not.
7 Q. Who is Owen McMahon?
8 A. Owen, at this time, was our
9 senior director of generic purchasing and
10 specialty programs.
11 Q. Is he still with the company?
12 A. He is.
13 Q. What's his current role?
14 A. Vice president of pharmacy
15 purchasing in some capacity.
16 Q. So he writes you on November 24,
17 2010 and says, "It is my understanding that due
18 to DEA regulation we are looking at limiting
19 stores purchases from our DCs on controls."
20 Do you see that?
21 A. I do.
22 Q. Other than this email, did you
23 have a discussion with him about thresholds or
24 limiting stores' purchases of controls?

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1 A. I did not, to the best of my
2 knowledge, no.
3 Q. Okay. You write back to him and
4 you say, "At present we are not looking at any
5 additional controls or thresholds on shipments
6 from the distribution centers."
7 Do you see that?
8 A. I do.
9 Q. Did I read that correctly?
10 A. You did.
11 Q. You say, "Our current thresholds
12 are in place. They have been for the past 10
13 years."
14 Do you see that?
15 A. I do.
16 Q. You say, "We are looking to
17 provide the distribution center a better
18 understanding of our replenishment parameters so
19 they can utilize that as part of their response
20 to the DEA should there be an inspection and
21 questions about suspicious orders."
22 Do you see that?
23 A. I do.
24 Q. What did you mean by that?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: I meant at that
3 particular time back in 2010, we at the
4 Rite Aid office were looking to put
5 together a document to provide to our
6 distribution centers on our suspicious
7 order monitoring program, so that they
8 would have a united one document to hand
9 to a DEA inspector should they come into
10 the pharmacy.
11 I was looking to determine what
12 the algorithm was and what the parameters
13 were to be able to put into that
14 document.
15 BY MR. PIFKO:
16 Q. At that time, did you not know
17 what the algorithm was?
18 MS. McENROE: Objection to form.
19 THE WITNESS: I did know what the
20 algorithm was, but I wanted a more
21 IT-techie type of an algorithm document
22 than I myself could put together.
23 BY MR. PIFKO:
24 Q. And then you said that you wanted

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1 to understand what the parameters were so you
2 could put that in a document; is that correct?
3 MS. McENROE: Objection to form.
4 THE WITNESS: Yes.
5 BY MR. PIFKO:
6 Q. Did you have an understanding at
7 that time of what the parameters were?
8 A. I had an idea of the parameters,
9 yes. I wasn't sure if my understanding was
10 complete or not, so I wanted to make sure
11 everything was complete when we sent the document
12 to the distribution centers.
13 Q. Is there any reason why you were
14 having this discussion at this particular time?
15 MS. McENROE: Objection to form.
16 THE WITNESS: I believe, based on
17 documents that I have looked at, that
18 there were some meetings to put together
19 around this time concerning suspicious
20 order monitoring.
21 BY MR. PIFKO:
22 Q. Why were there such meetings?
23 A. At that particular time, some
24 individuals from our company had attended a

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1 conference, and there was discussion about
 2 suspicious orders at the conference. And we were
 3 trying to have a discussion with all the
 4 different segments of the company that were
 5 involved.

6 Q. Was that one of the Buzzeo
 7 conferences?

8 A. Yes.

9 Q. Who specifically attended that
 10 conference that led to that discussion, do you
 11 recall?

12 A. This one I believe was Kevin
 13 Mitchell, our logistics person. I think at this
 14 time it was Kevin Mitchell.

15 Q. We looked at an email yesterday,
 16 I believe, where Kevin Mitchell comes back from
 17 one of those conferences and says he had some
 18 concerns about the company's suspicious order
 19 monitoring.

20 Do you recall that?

21 MS. McENROE: Objection to form.

22 THE WITNESS: I do.

23 BY MR. PIFKO:

24 Q. Is that the discussion that

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1 initiated this discussion?

2 A. It very well could be, yes.

3 Q. Do you recall Mr. Mitchell
 4 providing any specific explanation about what his
 5 concerns were after attending that conference?

6 MS. McENROE: Objection to form.

7 THE WITNESS: I believe his
 8 concerns were that our suspicious order
 9 monitoring program was not robust.

10 BY MR. PIFKO:

11 Q. Did he articulate why he felt
 12 your suspicious order monitoring program was not
 13 robust?

14 A. I don't remember why he -- what
 15 he said, no.

16 Q. Was anyone else part of that
 17 discussion?

18 A. We had a meeting on it with
 19 myself, Kevin Mitchell, Maggie Perritt and Andy
 20 Palmer.

21 Q. What did you discuss at that
 22 meeting?

23 A. Our suspicious order monitoring
 24 program.

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1 Q. Do you recall any specifics
 2 beyond that you discussed the suspicious order
 3 monitoring program?

4 A. I do.

5 Q. Okay. What do you recall
 6 specifically?

7 A. The individual people that were
 8 invited to that meeting each had an area of
 9 specialties to bring to the suspicious order
 10 monitoring program. They were from logistics,
 11 obviously, that were the owner. There was Maggie
 12 Perritt, who was from operations -- pharmacy
 13 operations. And there was Andy Palmer, who was
 14 from asset protection.

15 Q. Who was there from logistics?

16 A. I believe it was Kevin Mitchell.

17 Q. Did you call that meeting
 18 together?

19 A. I don't know -- I don't remember
 20 if I did or if Kevin did. Kevin may have called
 21 the meeting and I may have invited the other
 22 individuals.

23 Q. So that's where I was going to go
 24 with my question was, what was the reason for

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1 inviting Andy Palmer?

2 A. Andy Palmer at that time was in
 3 asset protection. And they had a piece of the
 4 suspicious order monitoring program. They had
 5 KPIs and a tool that they used to monitor for
 6 diversion, used to monitor for cycle counts up,
 7 cycle counts down. He was the asset protection
 8 portion of the suspicious order monitoring
 9 program.

10 Q. I believe you testified yesterday
 11 that the asset protection portion of the program
 12 did not have any connection to identifying or
 13 reporting suspicious orders; is that correct?

14 MS. McENROE: Objection to form.

15 THE WITNESS: That asset
 16 protection did not identify a suspicious
 17 order prior to it being shipped. Asset
 18 protection did, from a diversion
 19 standpoint, from an opening
 20 investigations, have some impact on the
 21 diversion of controlled substances.

22 BY MR. PIFKO:

23 Q. How did it have an impact on
 24 diversion of controlled substances?

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1 A. They would look at historical
2 data based on certain key performance indicators
3 that would identify that a store had ordered,
4 let's say, above what their traditional order
5 was. And if there was some deviation, then they
6 would begin an investigation into that particular
7 store.
8 Q. Did the investigations ever --
9 when -- scratch that.
10 When they conducted an
11 investigation, did they document that anywhere?
12 A. They did.
13 Q. Is there a specific format or
14 name for the document they would create?
15 A. At that particular time, it would
16 have been NaviCase or NaviScript.
17 Q. But NaviScript was never used to
18 report a suspicious order. Correct?
19 MS. McENROE: Objection to form.
20 THE WITNESS: It was not.
21 BY MR. PIFKO:
22 Q. To your knowledge, were any
23 orders identified as suspicious as a result of
24 that type of investigation?

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1 A. They were not.
2 Q. So every time that Andy
3 Palmer's -- he was the head of that team?
4 MS. McENROE: Objection to form.
5 THE WITNESS: Yes.
6 BY MR. PIFKO:
7 Q. Every time that his team
8 conducted an investigation, they never found any
9 suspicious activity to have occurred?
10 MS. McENROE: Objection to form.
11 THE WITNESS: Suspicious activity
12 is different from a suspicious order. I
13 am sure that their investigations led to
14 drug losses that were reported to the
15 Drug Enforcement Administration from
16 individual stores.
17 Did they report a suspicious
18 order versus a suspicious -- what -- the
19 terminology that you used, they were
20 reported to the DEA on a Form 106. They
21 were not reported as a suspicious order,
22 per se.
23 BY MR. PIFKO:
24 Q. If an order is placed in order to

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1 fill quantities of prescriptions that have been
2 stolen, do you believe that order could be
3 suspicious?
4 MS. McENROE: Objection to form.
5 THE WITNESS: Can you repeat the
6 question?
7 BY MR. PIFKO:
8 Q. Yeah.
9 If a store has a certain amount
10 of inventory of controlled substances, and for
11 purposes of this discussion let's keep it
12 Schedule III controlled substances. Okay?
13 So if a store has a material
14 volume of Schedule III controlled substances
15 stolen and it needs to place an order to
16 replenish that inventory as a result of the
17 theft, do you believe that that could be a
18 suspicious order?
19 MS. McENROE: Objection to form.
20 THE WITNESS: I do not believe
21 it's a suspicious order. If you are --
22 theft and diversion in a store does not
23 impact a suspicious order, per se.
24 BY MR. PIFKO:

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1 Q. Do you believe that if the
2 quantities of Schedule III controlled substances
3 that are ordered are increased because theft is
4 occurring at the store, that that could be a
5 suspicious order?
6 MS. McENROE: Objection, form.
7 THE WITNESS: It could not be --
8 excuse me -- a suspicious order to the
9 distribution center in simply ordering
10 the product. The distribution center
11 does not know the nature of what is going
12 to happen to those drugs.
13 BY MR. PIFKO:
14 Q. Do you believe that the
15 distribution center and the company has a duty to
16 know that the theft is occurring and factor that
17 into their shipping of orders?
18 MS. McENROE: Objection to form.
19 THE WITNESS: Can you repeat the
20 question? I'm sorry.
21 BY MR. PIFKO:
22 Q. Yeah.
23 Do you believe that the
24 distribution center and Rite Aid in general have

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1 a duty to know that the theft is occurring and
2 factor that into their evaluation of whether
3 they're shipping orders to a specific store?
4 MS. McENROE: Objection to form.
5 THE WITNESS: I believe Rite Aid
6 has a duty, from a pharmacy registrant
7 perspective, to identify theft and
8 diversion and to follow DEA protocol and
9 report it.
10 From the distribution side,
11 there -- just because simply a store has
12 diversion of an associate does not mean
13 that an order would be suspicious.
14 BY MR. PIFKO:
15 Q. Have you heard the term "know
16 your customer"?
17 A. I have.
18 Q. What's your understanding of what
19 that teams?
20 MS. McENROE: Objection, form.
21 THE WITNESS: Know your customer
22 is that you identify everyone that you
23 ship to. In the course of Rite Aid, our
24 customers are ourselves. To know your

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1 customer, you should make sure that their
2 licenses are correct. You should make
3 sure that they have a physical building
4 that is licensed by the Board of
5 Pharmacy. You should make sure that they
6 have a DEA registration. Knowing your
7 customer is making sure that they are
8 registered, that they are a pharmacy, and
9 they are entitled to be able to receive
10 and dispense controlled substances.
11 In Rite Aid's case, our customer
12 is ourselves. So from a licensing
13 perspective, the licensing coordinator is
14 in our corporate office. And so we know
15 the stores are licensed. We know the
16 whole process.
17 BY MR. PIFKO:
18 Q. This question came up yesterday,
19 so I know you know the answer, but I'll ask you
20 for purposes of the 30(b)(6).
21 Do you know what red flags of
22 diversion are?
23 MS. McENROE: Objection to form.
24 THE WITNESS: I know what red

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1 flags are, yes.
2 BY MR. PIFKO:
3 Q. What's your understanding of what
4 red flags of diversion are?
5 MS. McENROE: Objection to form.
6 THE WITNESS: Red flags are
7 identified by the Drug Enforcement
8 Administration for a pharmacist when
9 dispensing a controlled substance
10 prescription. There are numerous red
11 flags. They include, does the pharmacist
12 know the patient, is it a known patient.
13 They include, does the pharmacist know
14 the prescriber, is it a known prescriber.
15 They include a valid patient relationship
16 between the prescriber and the patient.
17 It also requires you to check to
18 determine, from a red flag standpoint, is
19 it in the geographic area. They
20 require -- a red flag can be to look at a
21 prescription to determine if it was a
22 forged prescription or not, to determine
23 if perhaps another pharmacy had declined
24 to fill and had noted on the

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1 prescription. Red flag would be to make
2 sure that the prescription was issued for
3 a valid medical reason by a prescriber in
4 the course of their due diligence and
5 their specialty.
6 BY MR. PIFKO:
7 Q. Did Rite Aid ever consider any
8 red flags of diversion with respect to whether it
9 was going to fill an order placed by any of its
10 pharmacies for a Schedule III controlled
11 substance?
12 MS. McENROE: Objection to form.
13 THE WITNESS: Rite Aid and all of
14 our pharmacies identify red flags. If a
15 red flag is identified, the prescription
16 is not filled at that particular time and
17 declined and provided back to the
18 patient. Should that be -- should there
19 be a red flag that meets our criteria, it
20 would not be dispensed.
21 BY MR. PIFKO:
22 Q. Do you believe that theft is one
23 of the red flags of diversion?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: Theft is not a red
2 flag of the prescription processing.
3 Part of theft is diversion, yes, but
4 involved in the red flag process, it's
5 not diversion as such in a red flag
6 process.
7 BY MR. PIFKO:
8 Q. When I asked you about "know your
9 customer," do you believe that the
10 know-your-customer requirement includes a
11 requirement to know about whether the red flags
12 of diversion are occurring at your customer's
13 location?
14 MS. McENROE: Objection to form.
15 THE WITNESS: I believe know your
16 customer, yes, would include if the
17 pharmacies are following the red flags
18 process.
19 BY MR. PIFKO:
20 Q. Okay. And so with respect to
21 Rite Aid's duty to prevent diversion and to
22 identify suspicious orders, did Rite Aid have any
23 system in place to consider red flags of
24 diversion when an order was placed at any of its

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1 pharmacies?
2 MS. McENROE: Objection to form.
3 THE WITNESS: If red flags were
4 identified when a prescription was being
5 dispensed, the prescription would not be
6 dispensed. So that would not result in
7 an order to the distribution center.
8 BY MR. PIFKO:
9 Q. So it's your testimony that in
10 every instance throughout the relevant time
11 period, if a red flag occurred, it was always
12 caught and observed at the pharmacy and never
13 resulted in a prescription being dispensed?
14 MS. McENROE: Objection to form.
15 THE WITNESS: Can you repeat
16 that, please?
17 BY MR. PIFKO:
18 Q. Yes.
19 So my question is, it's your
20 testimony that is it -- are you saying that in
21 every instance throughout the relevant time
22 period, if a red flag occurred, it was always
23 caught and observed at the pharmacy, and that
24 prescription was never dispensed?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: I would never say
3 in every instance.
4 BY MR. PIFKO:
5 Q. Okay. In most instances?
6 A. In the majority, yes.
7 MS. McENROE: Objection to form.
8 Mark, we've been going about an
9 hour.
10 Are you looking for a break, too?
11 THE WITNESS: (Witness nods
12 head.)
13 MS. McENROE: Okay. The witness
14 is asking for a break, too.
15 MR. PIFKO: Okay.
16 THE VIDEOGRAPHER: Going off the
17 record at 10:27 a.m.
18 - - -
19 (A recess was taken from
20 10:27 a.m. to 10:41 a.m.)
21 - - -
22 THE VIDEOGRAPHER: We're back on
23 the record at 10:41 a.m.
24 BY MR. PIFKO:

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1 Q. Welcome back.
2 Okay. Before we took a break, we
3 were talking about red flags of diversion and
4 knowing your customer. Okay?
5 A. Yes.
6 Q. Do you remember that?
7 So I was asking you if there was
8 a way that Rite Aid factors in the red flags of
9 diversion into a suspicious order that could be
10 placed -- or, sorry, an order that could be
11 placed.
12 MS. McENROE: Objection to form.
13 BY MR. PIFKO:
14 Q. Do you recall that discussion?
15 A. Yes.
16 Q. Okay. And am I correct that your
17 testimony was that Rite Aid factors in red flags
18 of diversion into its order system because the
19 pharmacist would identify that and that
20 prescription would never be filled; is that
21 correct?
22 MS. McENROE: Objection to form.
23 THE WITNESS: Could you do that
24 again, please?

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| <p style="text-align: right;">Page 62</p> <p>1 BY MR. PIFKO: 2 Q. Yep. 3 My question is -- well, why don't 4 you just tell me. How does Rite Aid factor red 5 flags of diversion into an order for a Schedule 6 III controlled substance? 7 MS. McENROE: Objection to form. 8 THE WITNESS: If there was a red 9 flag that was identified for a 10 prescription in a pharmacy, the 11 pharmacist has the ability to assess that 12 prescription and determine if their 13 prescription should be filled or not. 14 Simply because there's one red flag 15 doesn't mean that the prescription should 16 not be filled. 17 That being said, if there's a red 18 flag and the prescription is not filled, 19 and the pharmacist refuses to fill it, 20 there's no way that that's ever going to 21 get to be an order to go to the 22 distribution center, because at that 23 point, there's no dispensing of the drug. 24 There's no need for replenishment from</p> | <p style="text-align: right;">Page 64</p> <p>1 prescription presented with red flags, 2 yes. 3 BY MR. PIFKO: 4 Q. And you agree that that's not 5 always caught by a pharmacist. Correct? 6 MS. McENROE: Objection to form. 7 THE WITNESS: The majority of the 8 time it would be caught. But, yes, there 9 are instances where a red flag is not 10 caught or red flags are not caught. 11 BY MR. PIFKO: 12 Q. So my question is, in these 13 instances where red flags are not caught, is 14 there any system in place where Rite Aid takes 15 those red flags into account when considering 16 whether to ship an order to one of its 17 pharmacies? 18 MS. McENROE: Objection to form. 19 THE WITNESS: There is not. 20 BY MR. PIFKO: 21 Q. Does Rite Aid have any system in 22 place to evaluate whether prescriptions are being 23 placed without legitimate medical need at its 24 pharmacies when it's filling an order of Schedule</p> |
| <p style="text-align: right;">Page 63</p> <p>1 the distribution center. 2 BY MR. PIFKO: 3 Q. Is it your testimony that red 4 flags of diversion are always caught and stopped 5 by pharmacists before a prescription is filled? 6 MS. McENROE: Objection to form. 7 THE WITNESS: Not all red flags 8 are caught before diversion occurs or 9 before they're filled. 10 BY MR. PIFKO: 11 Q. So there are occasions when an 12 order is placed from a pharmacy where a 13 prescription has been filled even though there 14 were red flags; is that correct? 15 MS. McENROE: Objection to form. 16 THE WITNESS: Can you repeat, 17 please? 18 BY MR. PIFKO: 19 Q. You agree that there are 20 instances where a prescription is placed to be 21 filled at a Rite Aid pharmacy that may have 22 indicia of red flags. Correct? 23 MS. McENROE: Objection to form. 24 THE WITNESS: There could be a</p> | <p style="text-align: right;">Page 65</p> <p>1 III controlled substances for that pharmacy? 2 MS. McENROE: Objection to form. 3 THE WITNESS: The red flags 4 process is in place in Rite Aid 5 pharmacies to identify fraudulent 6 activity or activity related to a 7 prescription to identify the red flags on 8 a prescription for controlled substances. 9 BY MR. PIFKO: 10 Q. The only process in place is at 11 the pharmacy through the pharmacist; is that 12 correct? 13 MS. McENROE: Objection to form. 14 THE WITNESS: When dispensing a 15 prescription, the pharmacist is the front 16 line. And yes, they're a licensed 17 individual that's trained and schooled to 18 be able to identify red flags. So yes, 19 the red flags and the prescription is 20 identified by the pharmacist. It has 21 nothing to do with the distribution 22 center. 23 BY MR. PIFKO: 24 Q. All I'm trying to understand, is</p> |

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1 there any way that that kind of information is
2 passed on to the distribution center.
3 So is your testimony that
4 potential red flag activity at a store location
5 is never passed on to the distribution center?
6 MS. McENROE: Objection to form.
7 THE WITNESS: To the best of my
8 knowledge, the red flag activity is not
9 passed on to the distribution center back
10 when we distributed controlled substances
11 up till 2014.
12 BY MR. PIFKO:
13 Q. And there's no -- that means that
14 there was no system in place to consider red
15 flags of diversion at the distribution center
16 when an order was being shipped. Correct?
17 MS. McENROE: Objection to form.
18 THE WITNESS: That is correct.
19 The red flags are determined by the
20 pharmacist that is in the pharmacy in
21 whether or not to dispense the
22 prescription.
23 BY MR. PIFKO:
24 Q. Let's go back to the thresholds.

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1 Remember we were talking about
2 attributes of Rite Aid's system to identify,
3 report and halt suspicious orders.
4 MS. McENROE: Objection to form.
5 BY MR. PIFKO:
6 Q. You recall us discussing that?
7 A. I do.
8 Q. Okay. So it was your testimony
9 that thresholds are one attribute of the system.
10 Correct?
11 A. That is correct.
12 Q. And other than a -- less than a
13 dozen, all store locations had a threshold of
14 5,000 dosage units per NDC per order. Correct?
15 MS. McENROE: Objection.
16 THE WITNESS: Correct.
17 BY MR. PIFKO:
18 Q. And that was a threshold that was
19 in place for multiple decades. Correct?
20 MS. McENROE: Objection to form.
21 THE WITNESS: Yes. Keep in mind
22 for this, the Perryman Distribution
23 Center did not open until I believe 1998
24 or somewhere in that time frame.

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1 BY MR. PIFKO:
2 Q. So from the entirety of its
3 operation, that was the threshold when Rite Aid
4 was shipping Schedule III controlled substances
5 as a distributor. Correct?
6 MS. McENROE: Objection to form.
7 THE WITNESS: Correct.
8 BY MR. PIFKO:
9 Q. And we talked about a meeting,
10 when I showed you Exhibit 3, discussing the
11 thresholds. Correct?
12 A. We discussed a meeting.
13 Q. So you -- we talked about the
14 people who are present at the meeting, and you
15 said that Andy Palmer was there because he had
16 the asset protection program. Correct?
17 A. That is correct.
18 Q. And you clarified that NaviScript
19 is never used to identify or report a suspicious
20 order. Correct?
21 MS. McENROE: Objection to form.
22 THE WITNESS: That is correct.
23 BY MR. PIFKO:
24 Q. All right. And so Maggie Perritt

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1 was another person who was there from operations.
2 Correct?
3 A. Yes.
4 Q. And you invited her to that
5 meeting?
6 A. I don't remember who invited
7 whom, but yes, she was at the meeting.
8 Q. Why was she invited to the
9 meeting?
10 A. Maggie was the pharmacy
11 operations person at the meeting that knew
12 algorithms, and also was the operator there that
13 would be impacted by thresholds.
14 Q. When you say she would be
15 impacted by thresholds, what do you mean?
16 A. The service to the stores and the
17 pharmacies obtaining their drugs. Pharmacy
18 operations obviously is in charge of who -- the
19 pharmacists that are dispensing the drugs and the
20 operating of the pharmacies.
21 Q. So if there was a change in the
22 threshold, it would impact the pharmacy
23 operations?
24 MS. McENROE: Objection to form.

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| <p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: It could. It 2 could. 3 BY MR. PIFKO: 4 Q. How would it impact the pharmacy 5 operations? 6 A. It may impact their ordering. It 7 may impact the amount of product that they would 8 have on their shelves. There could be any number 9 of ways that it could be impacted. 10 Q. Was that part of the discussion 11 at this meeting? 12 A. At this meeting -- I don't 13 recall. 14 Q. Do you recall discussing -- you 15 said Maggie had some knowledge about algorithms; 16 is that correct? 17 A. That is correct. 18 Q. Do you recall a specific 19 discussion with Maggie about algorithms and 20 suspicious order monitoring at this meeting? 21 A. I recall what occurred at the 22 meeting was that we were trying to put down in 23 detail the algorithms that were used in our 24 suspicious order monitoring program so that we</p> | <p style="text-align: right;">Page 72</p> <p>1 to a government agency, such as the DEA, 2 concerning the algorithms that may have been 3 used? 4 MS. McENROE: Objection to form. 5 THE WITNESS: I believe the 6 distribution centers had information as 7 far as obtaining the orders and the 8 thresholds and part of their suspicious 9 order program, but they did not know the 10 detail of the algorithms to the effect of 11 what was included and how the algorithms 12 work. There's numerous algorithms that 13 come together. And they did not have all 14 of that, no. 15 They had a document to provide to 16 the DEA. They really did provide -- that 17 was sufficient for DEA inspections 2005, 18 2009, prior to this meeting. So the 19 documentation on suspicious order 20 monitoring was at the distribution center 21 and adequate for the DEA. 22 BY MR. PIFKO: 23 Q. There's a document that was 24 created in 2005?</p> |
| <p style="text-align: right;">Page 71</p> <p>1 could communicate it effectively to our 2 distribution centers on a one-page document so 3 that the DC would have something to present to 4 government agency, the Drug Enforcement 5 Administration, that would visit and do an 6 inspection. 7 Q. So prior -- and this meeting 8 occurred, if we look back at Exhibit 3, the email 9 is at the end of 2010. Agree? 10 A. Yes. 11 Q. Do you have a recollection about 12 when this meeting occurred after that email? 13 A. Maybe early 2011. I don't 14 recall. 15 Q. That's your best estimate, is 16 early 2011 when this meeting occurred? 17 A. Best estimate, yes. I don't -- I 18 don't recall truly. 19 Q. You said that you wanted to put 20 detail down concerning the algorithms so that you 21 could communicate them to the distribution 22 centers. 23 Prior to this discussion, did the 24 distribution centers have any document to present</p> | <p style="text-align: right;">Page 73</p> <p>1 A. There was a DEA inspection in 2 2005 at the distribution center. And as part of 3 their standard operating procedures in suspicious 4 order monitoring program, the distribution center 5 at that time had passed inspection. 6 Q. There was another inspection in 7 2009? 8 A. There was another inspection in 9 2009. 10 Q. Which specific facility are we 11 talking about with respect to the 2005 and 2009 12 inspections? 13 A. We are speaking of the Perryman 14 Distribution Center. 15 Q. You're opening a binder. 16 Can you tell me what that is? 17 A. Sure. It's a binder of documents 18 that I asked counsel to prepare for me to review 19 for the deposition. 20 Q. And you're looking for something 21 specific in there right now? 22 A. I was looking for a memo on the 23 DEA audit summary for 2005 and 2009. 24 Q. It's your understanding that</p> |

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1 there was some documentation concerning
2 algorithms that may have been provided during
3 those inspections?
4 MS. McENROE: Objection to form.
5 THE WITNESS: I was not at the
6 inspections. I do not know. I know that
7 there was an inspection and what was
8 provided to the DEA through their normal
9 routine audit, which is looking for
10 suspicious order monitoring. The
11 distribution centers had no violations at
12 those times.
13 BY MR. PIFKO:
14 Q. You don't know what was provided
15 to the DEA in connection with those inspections,
16 though?
17 MS. McENROE: Objection to form.
18 THE WITNESS: I do not.
19 BY MR. PIFKO:
20 Q. Did the DEA provide any written
21 documentation after those inspections?
22 A. I will check.
23 Q. If you can narrate for me what
24 you're checking, I would appreciate it.

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1 A. Sure.
2 I am narrating a communication
3 from Kevin Mitchell, who was our senior manager
4 of regulatory compliance, for the distribution
5 centers as an update of the inspection.
6 Typically when you have a DEA
7 inspection, they will leave you -- if there are
8 deficiencies, they typically do not leave you any
9 documentation. If you have passed a DEA
10 inspection, you can receive a letter of
11 admonition.
12 And in this particular
13 correspondence, the words were -- the closing
14 comments specifically mentioned that they have no
15 words of advice for the staff for improvement.
16 It was a flawless audit.
17 Q. Can you read the -- you are
18 looking at a document that was produced in the
19 case. Correct?
20 A. Yes.
21 Q. What's the Bates number for that
22 document? Do you know what that -- on the bottom
23 right-hand corner, there's a number.
24 A. 0047171.

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1 MS. McENROE: And that was a Rite
2 Aid produced document.
3 BY MR. PIFKO:
4 Q. There's some words before the
5 number.
6 Can you read those words, too?
7 A. Yes. Rite_Aid_OMDL_.
8 Q. Thanks.
9 So there was no DEA documentation
10 provided after that audit. Correct?
11 MS. McENROE: Objection to form.
12 THE WITNESS: Correct.
13 BY MR. PIFKO:
14 Q. The only documentation that you
15 have is a summary written by Kevin Mitchell?
16 MS. McENROE: Objection to form.
17 THE WITNESS: Yes.
18 BY MR. PIFKO:
19 Q. Let's talk about these algorithms
20 that you've been referring to.
21 So is it your testimony that
22 these algorithms are part of Rite Aid's
23 suspicious order monitoring system?
24 A. They are.

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1 Q. You've made it sound like there's
2 more than one?
3 A. Yes.
4 Q. Is that correct?
5 So what are the algorithms that
6 you contend are part of Rite Aid's suspicious
7 order monitoring system?
8 MS. McENROE: Objection to form.
9 THE WITNESS: In an overall
10 perspective, what happens is Rite Aid's
11 system, in order to place an order,
12 reviews a store's order history for the
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 At that particular point, it
17 places an order based on that individual
18 [REDACTED]
19 history. And it allows the store to
20 [REDACTED]
21 [REDACTED]
22 There are other factors that come
23 into play, such as a weighted moving
24 average, depending on what time the order

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| <p style="text-align: right;">Page 78</p> <p>1 is placed. There's calculate regular 2 movement averages, perform checks on 3 weeks with no movement. 4 So there's a series of 5 algorithms, but the general overall one 6 is looking at that specific store's data, 7 analyzing it, looking at what's on hand 8 in the store, and analyzing to determine 9 what order should be placed for that 10 store. 11 BY MR. PIFKO: 12 Q. Can orders be placed manually? 13 MS. McENROE: Object to the form. 14 THE WITNESS: Once the order gets 15 to the store, there is the ability for 16 the pharmacist to override the order, 17 yes. 18 BY MR. PIFKO: 19 Q. How does that process work, the 20 manual process? 21 A. If the algorithm says to order 22 60, and the pharmacist has an order for 90 23 tablets, then at that point the pharmacist can 24 override to get the additional tablets that they</p> | <p style="text-align: right;">Page 80</p> <p>1 stores, and twice a week in a very limited number 2 of stores. 3 Q. So let me break that down. 4 So most -- what most -- what's 5 the ordering pattern for most stores? 6 A. Most stores, Rite Aid places an 7 order once a week. 8 Q. Some stores place two orders a 9 week? 10 A. Some stores place two orders a 11 week, yes. 12 Q. Some stores place orders every 13 two weeks? 14 A. Yes. 15 Q. Is there any other ordering 16 pattern that we haven't discussed? 17 A. No. The stores are -- once a 18 store is programmed in, they can't place 19 additional orders. 20 Q. Well, I'm just trying to 21 understand. So there's three categories here. 22 There's stores that order once a 23 week, which is most of the stores. 24 Then there's another category of</p> |
| <p style="text-align: right;">Page 79</p> <p>1 need in the order. 2 Q. So when an order is going to be 3 placed, the pharmacist has access to see what 4 that order is? 5 MS. McENROE: Objection. 6 THE WITNESS: Yes. The 7 pharmacist has to have access to see that 8 order. 9 BY MR. PIFKO: 10 Q. So it's in this automated system, 11 but then there's some screen where the pharmacist 12 can see what the automated system is calculating 13 for the order? 14 A. Yes. 15 Q. Is there a name for that screen? 16 A. I don't know what the name is. 17 Q. Is the pharmacist required to 18 check the order before it's placed every time? 19 A. Typically they do. I don't know 20 if it's required. 21 Q. And so orders are placed by Rite 22 Aid stores with a regular frequency. Correct? 23 A. Orders are placed once a week, 24 once every other week in a limited number of</p> | <p style="text-align: right;">Page 81</p> <p>1 stores that can order two orders in a week. 2 Correct? 3 A. Correct. 4 Q. And then there's another category 5 of stores that place one order every two weeks. 6 Correct? 7 A. Correct. 8 Q. And there's no other pattern 9 within Rite Aid for ordering. Correct? 10 MS. McENROE: Objection to form. 11 THE WITNESS: From the 12 distribution center, no. 13 BY MR. PIFKO: 14 Q. When you say most stores are on 15 this one order every week pattern, do you have an 16 understanding about the percentage of stores that 17 are in that pattern? 18 A. Best guess estimate is 90 percent 19 are on that pattern. 20 Q. How about stores that place two 21 orders a week, do you have a sense of the 22 percentage of stores that fit in that category? 23 A. Let's reduce the first one to 24 80 percent. Sorry.</p> |

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1 Q. Okay. So 80 percent of the
2 stores place one order every week. Correct?
3 A. Correct.
4 Q. What percentage of stores place
5 two orders a week?
6 A. To the best of my knowledge,
7 about 15 percent.
8 Q. What percentage of stores place
9 one order every two weeks?
10 A. 5 percent.
11 Q. The stores that place two orders
12 a week, are they located in specific areas?
13 MS. McENROE: Objection.
14 THE WITNESS: The stores that
15 order twice a week typically are in urban
16 areas such as Center City Philadelphia,
17 Center City New York City, where to get
18 one order once a week, there's not enough
19 room in the store itself to hold the
20 front end merchandise.
21 So an order needs to be shipped
22 twice a week in order to keep the
23 merchandise in the store to be sold.
24 That's typically when a store gets two

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1 orders a week.
2 BY MR. PIFKO:
3 Q. So those stores are -- the square
4 footage of the stores is somewhat smaller and
5 they don't have room for inventory.
6 Is that what you're saying?
7 A. Typically, yes.
8 Q. Are there other occasions where a
9 store would have two orders a week?
10 A. No. That's primarily it.
11 Q. What about stores that order once
12 every two weeks, is there some sort of
13 characteristic about those stores?
14 A. Those may be the lower volume
15 stores that dispense less prescriptions or have
16 less movement of front end merchandise. A lower,
17 slower front end selling front end merchandise
18 may get it every two weeks.
19 Q. And just for clarity, when you
20 talk about "front end," that's everything that's
21 not in the pharmacy. Correct?
22 A. That is correct.
23 Q. Is that an internal term that
24 Rite Aid uses, front end versus pharmacy

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1 operations?
2 A. I think a lot of people in the
3 industry use the term "front end" versus
4 pharmacy.
5 Q. But that's also a term that Rite
6 Aid uses?
7 A. Yes.
8 Q. Let's go back to the algorithms
9 of ordering.
10 So a pharmacist can see the order
11 that's about to be placed in advance of it being
12 placed. Correct?
13 A. Yes.
14 Q. How far in advance of it being
15 placed can a pharmacist see it?
16 A. I believe a day. And then they
17 have time to review it and then make changes,
18 should they decide to.
19 Q. And then when a pharmacist sees
20 the order that's about to be placed, they can
21 manually increase the volumes that are on the
22 order; is that correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: They can manually

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1 increase the volumes or they can manually
2 decrease the volumes.
3 BY MR. PIFKO:
4 Q. So you talked about the highest
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 A. Yes.
10 Q. Okay. But then the pharmacist
11 could manually increase that. Correct?
12 MS. McENROE: Objection to form.
13 THE WITNESS: They have the
14 ability to do that.
15 BY MR. PIFKO:
16 Q. Are there any other algorithms
17 that are in place?
18 A. There are other algorithms or
19 there are other pieces of the program which
20 allows no greater than 99 bottles to be
21 distributed in -- of any given product at any
22 given time as well.
23 Q. Can a pharmacist manually
24 override that?

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1 A. The pharmacist has the ability
 2 to -- no. Pardon me. Step back.
 3 The pharmacist cannot override
 4 the 99 bottles.
 5 Q. Are there any other algorithms in
 6 place?
 7 And you're looking at a document.
 8 Can you read the Bates number of the document?
 9 A. I can. 004 -- oh.
 10 Rite_Aid_OMDL_0045426.
 11 Q. Is there a name for that
 12 document?
 13 A. It is called pharmacy
 14 replenishment algorithm. Okay.
 15 There are other parts to the
 16 algorithm that come into play as well, one of
 17 them being making an account for what we call
 18 90-day fills at the pharmacy.
 19 So what that means is a patient
 20 comes in and has a 30 -- a prescription for 30
 21 days of like their blood pressure medication.
 22 The patient chooses to get a 90-day supply or
 23 three months at a time.
 24 So instead of having the

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1 replenishment algorithm ship that product to the
 2 store for the 30 days, 30 days and 30 days, the
 3 algorithm takes into effect that that patient's
 4 not coming back until 90 days. So you have to
 5 have that product in 90 days instead of two 30
 6 days. So that's part of the algorithm as well.
 7 And that's the gist of the
 8 algorithms. The rest of it can be found in the
 9 document.
 10 Q. Were there any changes to the
 11 algorithms?
 12 MS. McENROE: Objection to form.
 13 THE WITNESS: To the best of my
 14 knowledge, no.
 15 BY MR. PIFKO:
 16 Q. Then going back to this meeting,
 17 Kevin Mitchell was another person who was
 18 invited. Correct?
 19 A. Correct.
 20 Q. Why was he invited?
 21 A. Kevin has responsibility for
 22 the controlled -- had responsibility for the
 23 controlled substance cages at the distribution
 24 centers and was working with the DEA coordinators

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1 in each of the facilities.
 2 Q. And why did that make him someone
 3 that was invited to this meeting?
 4 A. He owned the process of the
 5 distribution of the controlled substances and the
 6 pickers, was involved with -- directly involved
 7 with the individual pickers that picked, the
 8 operations of the controlled substance cages.
 9 So because of that and impacting
 10 thresholds, he was invited to the meeting. And
 11 also he was the one that attended the Buzzeo
 12 conference that wanted to have some discussion
 13 around it.
 14 Q. Were there any -- you talked
 15 about putting together a document.
 16 That was something that was
 17 discussed at this meeting. Correct?
 18 A. It was.
 19 Q. Did this meeting ultimately
 20 result in a document being created?
 21 A. It did not.
 22 Q. Why was that?
 23 A. Several -- an individual at the
 24 meeting left the company.

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1 Q. Who is that?
 2 A. Maggie Perritt.
 3 Q. And she was going to be
 4 responsible for putting this documentation
 5 together?
 6 A. Yes.
 7 Q. Do you know why she left?
 8 A. To take a job elsewhere. She
 9 moved to Florida.
 10 Q. Did she make any comments on the
 11 perceived sufficiency of Rite Aid's suspicious
 12 order monitoring processes?
 13 MS. McENROE: Objection to form.
 14 THE WITNESS: After we had the
 15 meetings -- the meeting, and everybody
 16 came together, everyone was overly
 17 confident that our suspicious order
 18 monitoring program was adequate and met
 19 DEA rule and regulation. The idea was
 20 again to put everything together in one
 21 space and in one document to be able to
 22 provide for the DEA. There were no --
 23 from Kevin to Andy to Maggie to myself,
 24 there were no changes at that time that

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1 were noted to be made to the suspicious
 2 order monitoring program, just to put it
 3 into a format that could be provided to
 4 governmental agencies when needed.
 5 BY MR. PIFKO:
 6 Q. Did anyone write down anything
 7 after that meeting stating that they were
 8 satisfied with Rite Aid's procedures?
 9 MS. McENROE: Objection to form.
 10 THE WITNESS: I don't know that
 11 anyone said that they were satisfied with
 12 it. There were communications from Kevin
 13 asking to -- for Maggie to put it in so
 14 that they could get it to distribution
 15 centers, but I don't know that there was
 16 anything that said everybody signed off
 17 at the meeting.
 18 BY MR. PIFKO:
 19 Q. Are there any other features of
 20 Rite Aid's procedures with respect to identifying
 21 suspicious orders?
 22 MS. McENROE: Objection to form.
 23 THE WITNESS: Sure. There is an
 24 asset protection side of our suspicious

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1 order monitoring program which has a
 2 number of KPIs which look at cycle counts
 3 down, which look at ordering
 4 abnormalities. So there are part of the
 5 asset protection, part of the suspicious
 6 order monitoring. And that can lead to
 7 investigations into stores, into theft,
 8 diversion, whatever it may be.
 9 BY MR. PIFKO:
 10 Q. But you testified earlier that
 11 that system was never used to identify and report
 12 a suspicious order. Correct?
 13 MS. McENROE: Objection to form.
 14 THE WITNESS: I did.
 15 BY MR. PIFKO:
 16 Q. Any other systems in place that
 17 Rite Aid had to identify, report and halt the
 18 shipment of suspicious orders?
 19 MS. McENROE: Objection to form.
 20 THE WITNESS: Those were the
 21 major three components.
 22 BY MR. PIFKO:
 23 Q. So to be clear, we talked about
 24 the thresholds, the algorithm and then you

Page 92

1 mentioned the asset protection aspects?
 2 A. Correct.
 3 Q. When you say those are the three
 4 components, that's what you were referring to?
 5 A. Yes.
 6 Q. Let's talk about the thresholds
 7 for a moment.
 8 So I want to talk about how they
 9 work.
 10 So every store, except for the
 11 less than a dozen that you mentioned, has a limit
 12 of 5,000 dosage units per NDC per order.
 13 Correct?
 14 A. Correct.
 15 Q. And how is that limitation
 16 implemented?
 17 A. It is implemented by the pickers
 18 in the distribution centers.
 19 Q. How specifically does that occur?
 20 A. In the distribution center, when
 21 an item is lit up to be picked, there's a device
 22 called the pick -- Pick-to-Light and it lights up
 23 and there's a quantity of the item to be picked.
 24 When it lights up, it will say the number of

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1 packages to be picked.
 2 If the picker sees, say, it's a
 3 bottle of 100, 53 packages to be picked, they
 4 will set -- they won't pick the item and they
 5 will immediately report it to their supervisor.
 6 Q. So an order is placed that
 7 exceeds the threshold, the picker sees that on
 8 the lighting system?
 9 A. Pick-to-Light, yes.
 10 Q. So the lighting system identifies
 11 that it exceeds the threshold or the picker does?
 12 MS. McENROE: Objection to form.
 13 THE WITNESS: The picker does.
 14 BY MR. PIFKO:
 15 Q. So the pickers know that there's
 16 this 5,000 dosage unit per NDC per order
 17 requirement?
 18 A. The pickers are very well versed
 19 in the threshold, yes.
 20 Q. Is there documentation that
 21 they're provided with that tells them about that
 22 threshold?
 23 A. Each of the pickers has an
 24 attestation that they understand the 5,000 dosage

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1 unit limit.
2 Q. What do you mean by dosage unit?
3 A. A tablet, a capsule, any
4 individual dose.
5 Q. Okay. So the picker has to look
6 and see if it's 10 bottles of 50, they have to
7 make that calculation?
8 A. Yes. They make that calculation.
9 Pharmacy packages are typically bottles of 100 or
10 bottles of 500 or bottles of 1,000. So it's a
11 simple calculation. There's not half bottles or
12 anything along those lines. It's typically 100,
13 500 and 1,000.
14 Q. Is there any automation that
15 makes that calculation for them?
16 MS. McENROE: Objection to form.
17 THE WITNESS: From the
18 Pick-to-Light, there's not.
19 BY MR. PIFKO:
20 Q. So an order comes in and they --
21 if it says six bottles of 1,000, that exceeds the
22 threshold. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: Correct.

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1 BY MR. PIFKO:
2 Q. And then if it exceeds the
3 threshold, they have to call their supervisor?
4 A. They do.
5 Q. What do they do when they call
6 their supervisor?
7 A. The supervisor comes over, stops
8 the pick and then investigates the order to
9 determine, was it an auto ship order, what was
10 the nature of the order.
11 And at that particular time, they
12 would short the order to the 5,000 threshold and
13 then inquire from the store, if it wasn't an auto
14 replenishment order, why they ordered the
15 additional bottle.
16 Q. So let's break that process out a
17 little bit.
18 You said the supervisor comes
19 over and looks at the order.
20 How do they tell if it's an auto
21 ship order?
22 A. There is -- once they realize the
23 drug in that, there is a terminal in the
24 distribution center in the cage. They can go to

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1 a computer and determine if the order was on a
2 replenishment and an auto ship or not.
3 Q. And we talked earlier about
4 manually overriding by the pharmacist.
5 Do you recall that?
6 A. I do.
7 Q. Is that what you're
8 distinguishing between a manual override and an
9 order that's not -- that has no manual overrides?
10 A. Yes.
11 Q. How does the supervisor see that
12 on a computer screen?
13 A. You can identify the particular
14 drug. And it would say what your projected order
15 was.
16 So let's say that we took those
17 6,000 dosage units that you were discussing, they
18 would be able to see that the auto generated
19 order was six bottles to know that that was the
20 case.
21 Q. And if the pharmacist manually
22 overrides it, then there's something they can see
23 on there that shows that the amount is different
24 than what the auto replenishment system would

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1 have placed?
2 A. That is correct. I believe
3 some -- one of the exhibits that we discussed
4 yesterday had a screenshot of a suggested order
5 and where you could see what the suggested order
6 was, when we were discussing 3151.
7 Q. And so where it says suggested
8 order, that's what the auto replenishment system
9 would order?
10 A. That is correct.
11 Q. And so if it's an auto
12 replenishment system order, what is the
13 supervisor supposed to do?
14 A. The supervisor -- the order is
15 still cut to the normal -- to the 5,000
16 threshold. And at that point, the supervisor
17 would reach out and contact the pharmacy to
18 determine, did they need the 6,000 dosage units
19 and if they did, what was the reason. And if
20 they -- if it continued to go above what the
21 threshold was, how they could get an increase to
22 their threshold.
23 Q. Is the order filled before that
24 conversation occurs?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: The order is
3 reduced to the 5,000, yes. And the
4 conversation can occur after the order is
5 reduced.
6 BY MR. PIFKO:
7 Q. Is there any documentation of
8 this conversation that occurs?
9 A. There is documentation in the
10 controlled drug cage.
11 Q. Is there a name of a form or a
12 logbook or something where they write down
13 anything about the conversation?
14 A. There is a log, yes.
15 Q. What's it called?
16 A. Let me look.
17 Q. And when you get to what you're
18 looking at, please identify the Bates number.
19 A. I'm going to flip through,
20 because I'm not finding what I wanted to see.
21 Q. What specifically are you looking
22 for?
23 A. There is a threshold log that is
24 created at the distribution centers that would

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1 identify who was called on what date and what
2 their response was.
3 Q. And when you're looking through
4 that binder -- I assume you've looked at all the
5 materials in the binder. Correct?
6 A. I have.
7 Q. Are you looking for an example of
8 a threshold log, or are you looking for a policy
9 that discusses it?
10 A. I'm looking for an example of a
11 threshold log. And it is called the Controlled
12 Drug Above Average Order Monitoring Log.
13 Q. And that's the document that --
14 where the supervisor notates any conversation
15 they may have had with the pharmacist?
16 A. That is correct.
17 Q. Is there any other place where
18 they would note their discussion?
19 A. This is the primary document
20 where they would note their discussion.
21 Q. You said primary.
22 Is there a secondary document?
23 A. They may have an Excel
24 spreadsheet that they would create a log as well,

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1 but this is the hands-on log in the cage.
2 Q. So any notes of any discussion
3 would be contained in that log?
4 A. Yes.
5 Q. What happens to that log after
6 it's -- where do they keep their log?
7 MS. McENROE: Objection to form.
8 THE WITNESS: They keep the log
9 in the controlled drug cage with the
10 other DEA records.
11 BY MR. PIFKO:
12 Q. Do they send it to anyone with
13 some frequency?
14 A. This log, they may send it to
15 myself or Kevin Mitchell or Chris Belli for
16 review as well.
17 Q. They may, but they're not
18 required to do so?
19 MS. McENROE: Objection to form.
20 THE WITNESS: They're not
21 required to do so.
22 BY MR. PIFKO:
23 Q. So they would call the pharmacist
24 to ask if they -- in a situation where the order

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1 exceeds the threshold, they would call the
2 pharmacist and ask if that was -- they intended
3 to place that order. Correct?
4 A. That is correct.
5 Q. But regardless of what the
6 pharmacist says, the order is cut to threshold?
7 MS. McENROE: Objection to form.
8 THE WITNESS: That is correct.
9 BY MR. PIFKO:
10 Q. And that may be shipped before
11 that conversation occurs. Correct?
12 A. That is also correct.
13 The number on the log that I'm
14 looking at, do you want that?
15 Q. Oh, yes. Thank you.
16 A. Okay. Rite_Aid_OMDL_0024039.
17 Q. Is there any other discussion
18 that occurs in the situation where an order
19 exceeds the threshold?
20 MS. McENROE: Objection to form.
21 THE WITNESS: The discussion is
22 at the distribution center when the order
23 is -- to the best of my knowledge, no.
24 BY MR. PIFKO:

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1 Q. So other than calling the
2 pharmacist to ask if they intended to place that
3 order, there is no other discussion. Correct?
4 A. If they're -- part of the policy
5 is if there was an order that there was deemed to
6 be suspicious, part of the policy then is to
7 contact government affairs, myself, to
8 investigate and determine if there was any
9 suspicion or diversion or anything.
10 Q. But that's never happened.
11 Correct?
12 A. It has not.
13 Q. No one has ever called you and
14 said an order is potentially suspicious?
15 MS. McENROE: Objection to form.
16 THE WITNESS: They have not.
17 BY MR. PIFKO:
18 Q. So other than this conversation
19 with the pharmacist, is there anything else that
20 happens?
21 MS. McENROE: Objection to form.
22 THE WITNESS: After the
23 conversation with the pharmacist, and if
24 the pharmacist deems that it's necessary,

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1 that they need the additional product to
2 service their patients and meet their
3 patients' healthcare needs, then they can
4 reach out to their pharmacy district
5 manager who, at that term will determine,
6 yes, there is a valid need to increase
7 the threshold. And then ask me to
8 complete a threshold override so that
9 they can go above the 5,000 dosage units
10 based on valid patient need.
11 BY MR. PIFKO:
12 Q. Let's hold on to that for a
13 second.
14 Other than making a request to
15 increase the threshold, is there any other
16 discussion that occurs?
17 MS. McENROE: Objection to form.
18 THE WITNESS: There is not.
19 BY MR. PIFKO:
20 Q. And there's -- other than writing
21 down this log, there is no other documentation
22 that's made. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: The log is the

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1 documentation of the call.
2 BY MR. PIFKO:
3 Q. That's the only documentation of
4 any investigation that may be conducted.
5 Correct?
6 MS. McENROE: Objection to form.
7 THE WITNESS: Yes. The log is
8 the documentation.
9 BY MR. PIFKO:
10 Q. So let's talk about the override
11 or threshold increase.
12 Can the -- is it possible to make
13 a one-time override?
14 MS. McENROE: Objection to form.
15 THE WITNESS: I don't know that
16 it's ever been done, but it could be
17 possible for someone to call me and ask
18 for a one-time override. And yes, it
19 could be done.
20 BY MR. PIFKO:
21 Q. But to your knowledge, that's
22 never happened?
23 A. No.
24 Q. So when you mentioned that

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1 someone could ask for a threshold increase, that
2 would be a permanent increase for that location.
3 Correct?
4 MS. McENROE: Objection to form.
5 THE WITNESS: That would be an
6 increase that would be put in place and
7 then monitored routinely to make sure
8 that the usage and the reason for the
9 override would occur.
10 I would foresee a one-time
11 threshold override if there was a store
12 that had a night burglary and all of the
13 products were stolen from the store. So
14 obviously you would need to get product
15 into that store. So there may be the
16 potential for an override in situations
17 like that.
18 BY MR. PIFKO:
19 Q. Do you recall that ever
20 occurring?
21 A. There are night break-ins, yes.
22 I don't recall ever doing a threshold override,
23 but we do have night break-ins and armed
24 robberies, yes.

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1 Q. In situations where an order is
2 placed to fill product that's been stolen in an
3 overnight robbery, is there any -- other than
4 reporting theft to the DEA, is there any
5 reporting of that order being potentially
6 suspicious?
7 MS. McENROE: Objection to form.
8 THE WITNESS: There is not.
9 BY MR. PIFKO:
10 Q. So then when we're talking about
11 this override of the threshold, the store can
12 then request that their threshold be increased?
13 A. If it was a one-time threshold,
14 typically the pharmacy district manager would
15 make a call and ask for it because of the
16 extenuating circumstance.
17 Q. But we talked this, there's never
18 been to your knowledge a one-time increase?
19 A. To the best of my knowledge, no.
20 Q. So if after this call -- so you
21 said that on the call, the supervisor asked the
22 pharmacist if they intended to place that order.
23 Correct?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: Correct.
2 BY MR. PIFKO:
3 Q. And then if they say yes, the
4 next thing that the supervisor tells them is
5 how -- the process that they can go through to
6 get their threshold increased. Correct?
7 MS. McENROE: Objection to form.
8 THE WITNESS: That is correct.
9 BY MR. PIFKO:
10 Q. And so what is the process then
11 that a store would undertake to get a threshold
12 increase?
13 A. At that particular time, the
14 store would reach out to their pharmacy district
15 manager or immediate supervisor and say, my order
16 has been cut back. I can't service my patients.
17 Please seek a threshold increase on hydrocodone
18 for my particular store. And then the pharmacy
19 district manager would send that increase request
20 to myself or a member of my team.
21 Q. Is there a name for that team?
22 A. Regulatory compliance, government
23 affairs. It's both one and the same.
24 Q. So you talked yesterday about the

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1 organizational structure of your department.
2 Correct?
3 A. I did.
4 Q. Is there any sort of
5 suborganizational structure of people who would
6 just deal with threshold increases?
7 A. From the distribution center,
8 when we distributed, there was myself and Andrea
9 Bucher.
10 Q. So only the two of you would have
11 been the only people who would deal with
12 threshold increases?
13 A. I'm thinking of the time frame of
14 when individuals entered the department. There
15 is the possibility that another member of my
16 team, Amy Knisely, may have looked at thresholds
17 as well.
18 Q. Anyone else?
19 A. No.
20 Q. So you, Andrea Bucher or Amy
21 Knisely would be the only people that would have
22 evaluated a threshold increase request?
23 A. Yes.
24 Q. Is there a document that has to

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1 be created to get requests to threshold increase?
2 MS. McENROE: Objection to form.
3 THE WITNESS: There is no
4 document, just an email with the reason
5 why the increase is needed and -- on an
6 email.
7 BY MR. PIFKO:
8 Q. So the district manager sends an
9 email to you or one of the members of your team?
10 A. They do.
11 Q. Can the pharmacist go directly to
12 you?
13 A. If the pharmacists come directly
14 to us, we reroute it to the pharmacy district
15 manager in order to make sure that they're aware
16 that there's a request in for them to say, yes,
17 please look at the request.
18 MS. McENROE: Mark, we've been
19 going for about an hour, so whenever is a
20 good time for a break.
21 MR. PIFKO: Okay.
22 BY MR. PIFKO:
23 Q. The district manager has to
24 approve sending the request to you and your team?

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1 A. Yes.

2 Q. And even if a pharmacist makes it

3 directly, you then back route it to the district

4 manager to make sure that they would approve it

5 first?

6 A. Sure. I would -- I could make a

7 phone call to the pharmacy district manager and

8 say, hey, we have a request that came in from

9 your store 1234, you know, do you want us to work

10 on it or look at it. And they would say yes or

11 no once they determined if it was needed or not.

12 But yes.

13 Q. We'll take a break in just a

14 moment, but I want to ask you, are there any

15 criteria or attributes of the pharmacy that you

16 look for when you're evaluating a threshold

17 increase?

18 MS. McENROE: Objection to form.

19 THE WITNESS: For a threshold

20 increase, we look at usage from the

21 store, the order history, the suggested

22 order and an average of the monthly

23 dispensings of that particular drug for

24 the store.

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1 BY MR. PIFKO:

2 Q. When they make the request to

3 you, though, do they have to provide any specific

4 type of information in the email request?

5 A. Sometimes they do and sometimes

6 they don't. Sometimes they would say, a new

7 clinic opened down the street, depending on the

8 request that came in.

9 Q. But my question was different.

10 Are they required to provide

11 certain types of information in the email making

12 the request to you?

13 A. They are not required to put it

14 in the email, but that does not mean that we

15 don't follow up and get the extenuating

16 circumstance of why they're asking for the

17 increase.

18 Q. So the only thing that's required

19 is that they tell you that they want the

20 increase?

21 MS. McENROE: Objection to form.

22 THE WITNESS: In the email, yes.

23 But there would be follow-up with them.

24 BY MR. PIFKO:

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1 Q. Okay. And so then upon receiving

2 that, you would then look at the data for that

3 pharmacy as you just testified a few minutes ago?

4 A. We would. Similar to what we

5 looked at yesterday for 3151.

6 MR. PIFKO: Okay. We can take a

7 break.

8 MS. McENROE: Okay.

9 THE VIDEOGRAPHER: Going off the

10 record at 11:35 a.m.

11 - - -

12 (A recess was taken from

13 11:35 a.m. to 11:53 a.m.)

14 - - -

15 THE VIDEOGRAPHER: We're back on

16 the record at 11:53 a.m.

17 BY MR. PIFKO:

18 Q. I want to ask you some questions.

19 You brought a binder with you

20 today. Correct?

21 A. I did.

22 Q. Can you describe for the record

23 what that binder is?

24 A. Sure. It was documents that I

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1 asked counsel to put together and make copies of

2 for me as part of my testimony, or depositions so

3 that I could refer to them.

4 Q. I'm handing you what's marked as

5 Exhibit 4.

6 - - -

7 (Deposition Exhibit No.

8 Hart-30(b)(6)-4, Index of Binder, was

9 marked for identification.)

10 - - -

11 BY MR. PIFKO:

12 Q. For the record, it's a copy of a

13 first page in the binder; is that correct?

14 A. That is correct.

15 Q. And this is -- it appears to be

16 some kind of index, would you agree?

17 A. Yes.

18 Q. Who created the index?

19 A. Counsel did, at my direction.

20 Q. The descriptive language here, is

21 that your language or is that counsel's language?

22 A. It's my language.

23 Q. So I want to go through the --

24 and identify for the record the first Bates

| | |
|---|---|
| <p style="text-align: right;">Page 114</p> <p>1 number of each of these exhibits -- or tabs in 2 the -- so these correspond, I assume, the numbers 3 1 through 27 correspond to a tab in the binder 4 with a document. Correct? 5 A. They do. 6 Q. So let's go through and read the 7 Bates number for the first page of each of the 8 tabs. 9 A. Tab number 1 is 10 Rite_Aid_OMDL_0046082. 11 Q. Keep doing it. 12 A. You want me to keep going? Oh, 13 okay. I wasn't sure. 14 The second, number 2, is 15 Rite_Aid_OMDL_0045625. 16 Tab 3 is Rite_Aid_OMDL_0015079. 17 Tab 4 is Rite_Aid_OMDL_0032594. 18 Tab 5 is Rite_Aid_OMDL_0024039. 19 Tab 6 is Rite_Aid_OMDL_0015876. 20 Tab 7 is Rite_Aid_OMDL_0046321. 21 Tab 8 is Rite_Aid_OMDL_0046064. 22 Tab 9 is Rite_Aid_OMDL_0045426. 23 Tab 10 is Rite_Aid_OMDL_0046598. 24 Tab 11 is Rite_Aid_OMDL_0032575.</p> | <p style="text-align: right;">Page 116</p> <p>1 There's a few highlights in 2 there. 3 Whose highlighting is that? 4 A. It's mine. 5 Q. Okay. And there are some tabs in 6 there as well, little -- like the green little 7 Post-it tabs. 8 A. Yes. 9 Q. Did you put those in there? 10 A. I asked counsel to put them 11 there. 12 Q. Okay. You asked counsel. 13 What was the reason why you asked 14 counsel to put certain tabs on certain things? 15 A. There were certain areas that if 16 I wanted to refer to them, they would be readily 17 available. And certain places to review 18 documents. 19 Q. Did you make any notes on any of 20 those documents other than highlighting? 21 A. I think I only made one note, 22 which was on the interrogatories. 23 Q. What was the note that you made? 24 A. It was just that number 21 was</p> |
| <p style="text-align: right;">Page 115</p> <p>1 Tab 12 is Rite_Aid_OMDL_0046228. 2 Tab 13 is Rite_Aid_OMDL_0044402. 3 Excuse me a minute. 4 Tab 14, Rite_Aid_OMDL_0014338. 5 Tab 15, OM -- 6 Rite_Aid_OMDL_0044791. 7 Tab 16, Rite_Aid_OMDL_0024382. 8 Tab 17, Rite_Aid_OMDL_0023939. 9 Tab 18, Rite_Aid_OMDL_0047171. 10 Tab 19, Rite_Aid_OMDL_0046552. 11 Tab 20, Rite_Aid_OMDL_0046772. 12 Tab 21, Rite_Aid_OMDL_0032622. 13 Tab 22, Rite_Aid_OMDL_0032621. 14 Excuse me. 15 Tab 23, Rite_Aid_OMDL_0012547. 16 Tab 24, Rite_Aid_OMDL_0046700. 17 Tab 25, Rite_Aid_OMDL_0036784. 18 Tab 26, Rite_Aid_OMDL_0012415. 19 Tab 27 is -- doesn't have a -- 20 Q. Okay, right. That's the 21 interrogatory responses. 22 A. Yes. 23 Q. So during the break, I looked 24 through the notebook a little bit.</p> | <p style="text-align: right;">Page 117</p> <p>1 the interrogatory that was still on the first 2 response. 3 Q. Any other -- 4 A. I don't believe there were any 5 other notes I made, no. 6 Q. Did you review all these 7 documents prior to today's deposition? 8 A. I did. 9 Q. Did you review any other 10 documents prior to today's deposition, beyond 11 what's in this -- that binder? 12 A. I did. 13 Q. What was the basis for reviewing 14 the other documents that you reviewed other than 15 the ones that are in the binder? 16 MS. McENROE: Objection. I just 17 want to caution the witness in terms of 18 not revealing substance discussed with 19 counsel, to avoid divulging any verbally, 20 of course, privileged information. 21 Can you restate the question? 22 Just so I make sure I understand how it's 23 not asking for privileged information. 24 BY MR. PIFKO:</p> |

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1 Q. Yeah.
 2 So you reviewed the documents in
 3 the binder to prepare for the deposition.
 4 Correct?
 5 A. Correct.
 6 Q. And you reviewed other documents
 7 that aren't in the binder to prepare for the
 8 deposition; is that correct?
 9 A. Correct.
 10 Q. Okay. When did you review the
 11 other documents that weren't in the binder?
 12 A. When I met with counsel to
 13 prepare.
 14 Q. Okay. It's like a two-inch
 15 binder that you have in front of you.
 16 It's basically full. Agreed?
 17 A. Yes.
 18 Q. And is it double-sided?
 19 A. Yes.
 20 Q. The volume of documents that you
 21 reviewed that's not in the binder, how does that
 22 compare to the volume of documents that's in the
 23 binder?
 24 MS. McENROE: Objection to form.

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1 THE WITNESS: Many more documents
 2 were reviewed aside from this -- these
 3 27.
 4 BY MR. PIFKO:
 5 Q. So you would say there's a lot
 6 more documents that you reviewed to prepare for
 7 the deposition that aren't in the binder.
 8 Correct?
 9 A. There were.
 10 Q. You just went through the
 11 exercise of reading all those numbers. As we
 12 discussed, those are Bates numbers.
 13 Do you believe that all the
 14 documents that you reviewed to prepare for the
 15 deposition had those kinds of numbers on them?
 16 A. I believe so, yes.
 17 Q. Do you know if there's any
 18 documents that you reviewed to prepare for the
 19 deposition that were not provided to the
 20 plaintiffs in the litigation?
 21 MS. McENROE: What he means by
 22 that is, if it has a Bates number, that
 23 it would be provided to plaintiffs in the
 24 litigation.

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1 THE WITNESS: I believe all the
 2 documents that I reviewed were provided.
 3 BY MR. PIFKO:
 4 Q. How did you decide what documents
 5 that you wanted to review?
 6 A. I looked at the importance of the
 7 documents and what I might make part of my
 8 deposition. And picked some of the positives or
 9 like in the analytics part of it, the algorithms.
 10 I'm not an algorithm person, so I wanted to have
 11 something in front of me to be able to review.
 12 Q. Did you speak to anyone other
 13 than counsel to prepare for the deposition?
 14 A. Today or previously?
 15 Q. At any time.
 16 A. I have.
 17 Q. Okay. Who did you speak with?
 18 A. I spoke with Marcia Brumbaugh,
 19 who is in our IT department. Charlie Miller,
 20 Andy Palmer, Ron Chima.
 21 I'm trying to think.
 22 Those are the people within the
 23 corporation that I spoke to, or with or former.
 24 Q. How long did you speak to Marcia?

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1 A. I believe it was about an
 2 hour-and-a-half.
 3 Q. Did you have more than one
 4 conversation with her?
 5 A. I had one conversation with her.
 6 Q. What did you discuss with her to
 7 prepare for the deposition?
 8 MS. McENROE: Objection. I just
 9 want to interject. To the extent counsel
 10 was involved, that you shouldn't discuss
 11 the substance as privileged.
 12 THE WITNESS: Okay.
 13 MR. PIFKO: Well, preparations
 14 for a 30(b)(6) are not -- if she's trying
 15 to inform herself, they're not
 16 privileged.
 17 MS. McENROE: On the underlying
 18 facts, I agree with you. I just want to
 19 make sure that any of the substance that
 20 could have been discussed at the
 21 direction of counsel or with input from
 22 counsel is not divulged inadvertently.
 23 THE WITNESS: Can you repeat the
 24 question?

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1 BY MR. PIFKO:
2 Q. Yeah.
3 I just want to know -- okay.
4 So you had one conversation with
5 Marcia to prepare for the deposition. Correct?
6 A. I did.
7 Q. Okay. And my question is, and
8 you said that you spoke to her for about an
9 hour-and-a-half. Correct?
10 A. That is correct.
11 Q. Sorry. You need to give an
12 audible response.
13 Did you speak to her in person or
14 on the phone?
15 A. In person.
16 Q. Who else was present at that
17 meeting?
18 A. Counsel.
19 Q. Anyone else?
20 A. That was it.
21 Q. Okay. And for purposes of
22 preparing of the deposition, what did you discuss
23 with her?
24 A. We discussed the algorithm.

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1 Q. Anything else?
2 A. That was primarily it.
3 Q. What's Marcia's background?
4 A. She is in our information -- IT
5 department.
6 Q. Does she have knowledge about the
7 algorithm?
8 A. She does.
9 Q. Did she have any role in
10 designing it?
11 A. I don't know that.
12 Q. Do you know how long she's been
13 with the company?
14 A. I'm going to say at least 15
15 years.
16 Q. Do you know if Marcia had any
17 role in modifying the algorithm at any time?
18 A. I don't know that.
19 Q. Okay. For purposes of preparing
20 for the deposition, what did Marcia tell you
21 about the algorithm?
22 A. We went over the document on the
23 algorithm that was involved in here, just to give
24 an overview of the algorithm.

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1 Q. And which tab was that?
2 A. Let me look.
3 That would be 7 and 8.
4 Q. What else did you discuss with
5 her to prepare for the deposition?
6 A. Primarily the algorithm.
7 Q. What did she tell you about how
8 it functions?
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]. Then there was the
14 ability to override the order up to [REDACTED].
15 Q. You also spoke to Charlie Miller?
16 A. I did.
17 Q. Who is Charlie Miller?
18 A. Charlie Miller is a pharmacist
19 for Rite Aid at present.
20 Q. Where is he based?
21 A. He is in Pennsylvania.
22 Q. Does he work for a specific
23 store?
24 A. Yes, he's a pharmacist in a

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1 store. I don't know the location.
2 Q. Somewhere in Pennsylvania?
3 A. Yes.
4 Q. In Philadelphia, or you don't
5 know that?
6 A. I think closer to York.
7 Q. And what did you speak with Mr.
8 Miller to prepare for the deposition about?
9 MS. McENROE: Same objection,
10 same instruction, in terms of any
11 involvement of counsel, stay away from
12 any of that sort of privileged
13 discussion. But for the underlying
14 facts, so long as you're not divulging
15 privileged information, you may answer.
16 THE WITNESS: Mr. Miller used to
17 be in the corporate office at one point,
18 and he was responsible for replenishment
19 at that time. And so I had a discussion
20 with him as far as replenishment system
21 as well.
22 BY MR. PIFKO:
23 Q. What did he tell you about the
24 replenishment system?

| | |
|---|--|
| <p style="text-align: right;">Page 126</p> <p>1 A. It was a brief discussion. I</p> <p>2 don't know -- I don't remember exactly what he</p> <p>3 told me, because he was actually working in a</p> <p>4 store at the time and didn't have a lot of time</p> <p>5 to talk to me.</p> <p>6 Q. So you spoke to him on the phone?</p> <p>7 A. Yes.</p> <p>8 Q. Less than 20 minutes?</p> <p>9 A. Yes.</p> <p>10 Q. Less than five minutes?</p> <p>11 A. Yes.</p> <p>12 Q. Andy Palmer, you spoke to him to</p> <p>13 prepare for the deposition?</p> <p>14 A. I did.</p> <p>15 Q. How many times did you speak with</p> <p>16 him?</p> <p>17 A. Twice.</p> <p>18 Q. Were those in person or on the</p> <p>19 phone?</p> <p>20 A. They were in person.</p> <p>21 Q. When was the first time that you</p> <p>22 spoke to Andy?</p> <p>23 A. Two to three weeks ago.</p> <p>24 Q. When was the second time you</p> | <p style="text-align: right;">Page 128</p> <p>1 A. We did review some documents.</p> <p>2 Q. What documents did you review?</p> <p>3 A. Some Above Average logs.</p> <p>4 Q. Anything else?</p> <p>5 A. That was primarily it.</p> <p>6 Q. Are you aware that Andy Palmer</p> <p>7 was deposited in this case?</p> <p>8 A. I am.</p> <p>9 Q. Did you review his deposition</p> <p>10 transcripts to prepare for this deposition?</p> <p>11 A. I did not review Andy's</p> <p>12 transcripts.</p> <p>13 Q. Did you review any deposition</p> <p>14 transcripts to prepare for this deposition?</p> <p>15 A. I reviewed Chris Belli's</p> <p>16 transcript, Rick Chapman's transcript and part of</p> <p>17 Andrea Bucher's transcript.</p> <p>18 Q. Only part of Andrea's transcript?</p> <p>19 A. Yes.</p> <p>20 Q. What part of her transcript did</p> <p>21 you review?</p> <p>22 A. I briefly read through</p> <p>23 approximately the first half of it and then that</p> <p>24 was it.</p> |
| <p style="text-align: right;">Page 127</p> <p>1 spoke to him?</p> <p>2 A. Within the last week or two.</p> <p>3 Q. The first conversation that you</p> <p>4 had with him, how long was that?</p> <p>5 A. A few hours.</p> <p>6 Q. What did you discuss during that</p> <p>7 conversation?</p> <p>8 MS. McENROE: And again, same</p> <p>9 objection for the record in terms of</p> <p>10 protecting any privileged information</p> <p>11 that may have come from or discussed</p> <p>12 specifically with counsel. In terms of</p> <p>13 underlying facts that you gained from Mr.</p> <p>14 Palmer, if any, you're allowed to discuss</p> <p>15 those, but please be careful not to</p> <p>16 divulge privileged information.</p> <p>17 THE WITNESS: Okay. We discussed</p> <p>18 the asset protection part of KPIs that we</p> <p>19 have discussed.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Anything else?</p> <p>22 A. That was primarily that.</p> <p>23 Q. Did you review any documents with</p> <p>24 him to have that discussion?</p> | <p style="text-align: right;">Page 129</p> <p>1 Q. Why was is it that you only</p> <p>2 looked at the first half?</p> <p>3 A. I simply didn't have enough time.</p> <p>4 Q. What did you learn from reviewing</p> <p>5 her transcript?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 THE WITNESS: When she was --</p> <p>8 MS. McENROE: You can answer.</p> <p>9 THE WITNESS: What she was asked</p> <p>10 questions about, similar to what I was</p> <p>11 asked questions about.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. So then you said you met with</p> <p>14 Andy Palmer again in the last week or so?</p> <p>15 A. Yes.</p> <p>16 Q. How long was that meeting?</p> <p>17 A. An hour, an hour-and-a-half.</p> <p>18 Q. What did you discuss during that</p> <p>19 meeting?</p> <p>20 MS. McENROE: Same objection and</p> <p>21 same instruction with respect to not</p> <p>22 divulging privileged communications. But</p> <p>23 to the extent that you learned facts that</p> <p>24 you're testifying about here today, you</p> |

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1 may testify.
2 THE WITNESS: I learned
3 additional information about the KPIs.
4 BY MR. PIFKO:
5 Q. Anything else?
6 A. That was primarily it.
7 Q. Did you learn new information
8 that you hadn't learned in the previous meeting?
9 A. It was a review of some and then
10 gaining a better knowledge of them.
11 Q. Why did you want to learn about
12 the KPIs to prepare for the deposition?
13 A. That was -- that's really an
14 asset protection tool that I wasn't thoroughly
15 involved in, and I wanted to get an idea of some
16 of the different KPIs, such as the trifecta or
17 other pieces of what asset protection was doing.
18 Q. When you say "trifecta," what do
19 you mean by that?
20 A. That is one of the tools that
21 Andy uses to identify like cycle counts down.
22 There's three parts of the tool that he uses to
23 identify outlying stores.
24 Q. What is a cycle count?

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1 A. A cycle count is when a
2 pharmacist is in a store and they go to the shelf
3 and they pick a bottle off and the bottle has 90
4 pills in it and they go to dispense in the
5 dispensing system and instead of 90 pills, the
6 dispensing system says that they should have 100.
7 And at that point then they cycle count down from
8 100 to 90 pills, so that the system is correct
9 with what the on-hand quantity is.
10 Q. Why is that something that the
11 asset protection department measures?
12 MS. McENROE: Objection to form.
13 You may answer.
14 THE WITNESS: Asset protection
15 looks at cycle counts down for potential
16 diversion.
17 BY MR. PIFKO:
18 Q. Because theoretically if the
19 system says there's a higher number of pills than
20 there actually are, they might have been stolen
21 by somebody?
22 MS. McENROE: Objection to form.
23 THE WITNESS: That is correct.
24 BY MR. PIFKO:

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1 Q. So you mentioned cycle counts.
2 What else is in the trifecta that
3 you mentioned?
4 A. I don't remember.
5 Q. Did you discuss anything else
6 with Mr. Palmer in the second meeting?
7 MS. McENROE: Same instruction
8 with respect to privilege.
9 You may answer.
10 THE WITNESS: Not that I
11 remember, no.
12 BY MR. PIFKO:
13 Q. How about Ron Chima, what did
14 you --
15 MS. McENROE: Go ahead.
16 BY MR. PIFKO:
17 Q. What did you discuss with Mr.
18 Chima?
19 MS. McENROE: I'm going to object
20 and instruct the witness not to answer.
21 Mr. Chima is in-house counsel for Rite
22 Aid, and so I -- I have given you some
23 leeway with respect to the underlying
24 fact witnesses, but I'm sorry that I

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1 can't do the same with respect to Mr.
2 Chima.
3 BY MR. PIFKO:
4 Q. Did you discuss any facts that
5 you needed to know to serve as the 30(b)(6)
6 witness with Mr. Chima?
7 MS. McENROE: That's just a yes
8 or no.
9 THE WITNESS: I did not discuss
10 any facts.
11 BY MR. PIFKO:
12 Q. How long did you meet with Mr.
13 Chima?
14 A. Not long at all. I would -- you
15 know, a short meeting. Not even a meeting, a
16 conversation.
17 MS. McENROE: Okay.
18 BY MR. PIFKO:
19 Q. Was that in person?
20 MS. McENROE: You may answer that
21 question.
22 THE WITNESS: Yes.
23 BY MR. PIFKO:
24 Q. When was that?

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1 A. Way back when the whole process
2 started.
3 Q. So a few months ago?
4 A. Yes.
5 Q. On or around the time that you
6 first saw the notices?
7 A. Yes.
8 MR. PIFKO: Why don't take a --
9 it looks like it's 12:20, we'll take a
10 lunch break.
11 MS. McENROE: Sure.
12 THE VIDEOGRAPHER: Going off the
13 record at 12:16 p.m.
14 - - -
15 (A recess was taken from
16 12:16 p.m. to 1:10 p.m.)
17 - - -
18 THE VIDEOGRAPHER: Back on the
19 record at 1:10 p.m.
20 BY MR. PIFKO:
21 Q. Welcome back.
22 A. You too.
23 Q. Before the break, we were talking
24 about threshold increases.

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1 Do you recall that?
2 A. I do.
3 - - -
4 (Deposition Exhibit No.
5 Hart-30(b)(6)-5, Email chain, top one
6 dated 16 Sep 2011, Bates stamped
7 MCKMDL00632923 through MCKMDL00632925,
8 was marked for identification.)
9 - - -
10 BY MR. PIFKO:
11 Q. I'm handing you a document that
12 was previously admitted with Ms. Novack's
13 deposition, but I'm also going to remark it for
14 this deposition. It's marked as Novack-6, but
15 I'm going to mark it here as Hart-30(b)(6)-5.
16 A. Thank you.
17 Q. Take a minute to review that.
18 For the record, it's document
19 Bates labeled MCKMDL00632923 through 25.
20 MS. McENROE: Just for the
21 record, I'm going to object as to scope.
22 I know that we have topic 18, which is,
23 "Each application for, and/or change of,
24 any threshold to prescription" opioids --

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1 "opiates," sorry, in a CT1 jurisdiction."
2 Looking at this document just
3 briefly --
4 MR. PIFKO: Well, I haven't asked
5 a question yet, so --
6 MS. McENROE: I know. I'm just
7 objecting to the line of questioning that
8 would come off of this document that you
9 just put in as one to go with her
10 30(b)(6), because I don't believe this
11 actually has to do with Rite Aid of
12 Maryland's thresholds.
13 MR. KELLY: I'm going to object.
14 This is a McKesson-produced document,
15 based on the Bates stamp.
16 MR. PIFKO: It's already been
17 admitted in other depositions, so --
18 MR. KELLY: But -- that may be
19 the case with a different deponent, but
20 we haven't had this pre-cleared for this
21 particular witness. I don't know if we
22 have taken a look at it yet to see if
23 there's any --
24 MR. PIFKO: It's also not --

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1 permission isn't required, because it's
2 only information that the Rite Aid
3 company had already had awareness of.
4 There's nothing just McKesson on here.
5 MR. KELLY: Okay.
6 MS. MOORE: I think -- wasn't the
7 agreement that if the witness isn't on
8 the document -- isn't the --
9 MR. PIFKO: Well, she's Rite Aid.
10 She's -- the witness is Rite Aid. Rite
11 Aid is on it.
12 MR. KELLY: Just to be clear,
13 we're lodging an objection on the record,
14 we're not withdrawing it, but I
15 understand the point that you're making.
16 Looking through this briefly, it doesn't
17 appear that this witness is on this
18 document.
19 MR. PIFKO: The witness is Rite
20 Aid, and Rite Aid is all over the
21 document.
22 MS. McENROE: The witness is
23 testifying on behalf of Rite Aid of
24 Maryland, Inc., doing business as the

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1 Mid-Atlantic Customer Support Center,
2 which is the Perryman Distribution
3 Center, for clarification.
4 I don't think you've established
5 that that equals Rite Aid or Ms. Lai in
6 any way, but you may proceed.
7 BY MR. PIFKO:
8 Q. Are you done reviewing the
9 document?
10 A. I'm reading.
11 Q. Huh?
12 A. I'm reading.
13 Q. Okay.
14 A. Okay.
15 Q. Have you seen this document
16 before?
17 A. I don't believe so.
18 Q. Do you understand what's being
19 discussed in this document?
20 A. I do.
21 Q. What's your understanding of the
22 discussion here?
23 A. A Rite Aid store location is
24 requesting an increase from McKesson in the

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1 threshold for oxycodone.
2 Q. So as a structural matter, we
3 talked about Rite Aid thresholds.
4 You recall discussing that
5 earlier. Correct?
6 A. Yes.
7 Q. Okay. If a pharmacy exceeds a
8 Rite Aid threshold, that pharmacy can order
9 directly from McKesson. Correct?
10 A. They can order from McKesson,
11 yes.
12 Q. Do they need anyone's permission
13 to place an order from McKesson?
14 MS. McENROE: Objection to form.
15 THE WITNESS: They do not.
16 BY MR. PIFKO:
17 Q. And the pharmacist just does that
18 directly on their own?
19 A. They can, yes.
20 MR. KELLY: Objection to form.
21 BY MR. PIFKO:
22 Q. They just call McKesson, some
23 account executive, and place the order.
24 Is that how it works?

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1 MS. McENROE: Objection to form
2 and again scope. I don't see how this
3 falls within the 30(b)(6) topics in any
4 way.
5 THE WITNESS: There's an
6 automated system. They can log on to a
7 computer and generate an order from
8 McKesson. They don't have to make a
9 phone call.
10 BY MR. PIFKO:
11 Q. Is there a policy that when Rite
12 Aid was self-distributing Schedule III controlled
13 substances that it should only place an order for
14 those substances from McKesson if it exceeded its
15 own threshold?
16 MS. McENROE: Objection to form.
17 THE WITNESS: There was no policy
18 that stated that if a store reached the
19 Rite Aid threshold that they were to
20 order that product from McKesson.
21 BY MR. PIFKO:
22 Q. Was there a policy, though, that
23 said they couldn't order from McKesson unless
24 they had exceeded their threshold?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: They could order
3 from McKesson and -- even if they didn't
4 reach their threshold.
5 BY MR. PIFKO:
6 Q. Okay. So there was no
7 limitations on how a pharmacy could place an
8 order with McKesson?
9 MS. McENROE: Objection to form.
10 THE WITNESS: There were McKesson
11 thresholds in place as well as Rite Aid
12 thresholds.
13 BY MR. PIFKO:
14 Q. We'll get to that.
15 But my question just is, other
16 than speaking about thresholds, just as a general
17 matter, there was no limitation on the
18 circumstances when a Rite Aid pharmacy could
19 place a direct order with McKesson with respect
20 to Schedule III substances during the time period
21 when Rite Aid self-distributed those substances?
22 MS. McENROE: Objection to form.
23 THE WITNESS: There was not.
24 BY MR. PIFKO:

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1 Q. So getting into that, with
2 respect to thresholds, it's your understanding
3 that in addition to the Rite Aid thresholds, if a
4 Rite Aid store ordered from McKesson, McKesson
5 had its own threshold system. Correct?
6 MS. McENROE: Objection to form.
7 And again this whole line of questioning
8 is way beyond the scope of the 30(b)(6).
9 THE WITNESS: They did.
10 BY MR. PIFKO:
11 Q. Did Rite Aid consider the
12 thresholds established by McKesson to be part of
13 its suspicious order monitoring program?
14 MS. McENROE: Objection to form.
15 THE WITNESS: We did not.
16 BY MR. PIFKO:
17 Q. So this document that you've been
18 handed, it discusses a request that's first
19 internally being discussed in Rite Aid about
20 requesting an increase and then ultimately
21 there's a request to McKesson.
22 Do you agree?
23 MS. McENROE: Objection to form.
24 Again, the witness is not on the

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1 document.
2 THE WITNESS: I do.
3 BY MR. PIFKO:
4 Q. Was there a procedure in place
5 where, if a Rite Aid store wanted to exceed a
6 McKesson threshold, they had to get permission
7 from you first?
8 MS. McENROE: Objection to form.
9 THE WITNESS: The McKesson
10 thresholds at this time were not under my
11 jurisdiction.
12 BY MR. PIFKO:
13 Q. At some later time they were?
14 A. At some later time they were,
15 yes.
16 MR. KELLY: Objection.
17 BY MR. PIFKO:
18 Q. When did McKesson thresholds move
19 under your jurisdiction?
20 A. Once Ms. Lai left her position at
21 the corporate office.
22 MR. KELLY: Objection to form.
23 BY MR. PIFKO:
24 Q. When was that?

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1 A. I don't remember. I don't
2 remember the exact time.
3 Q. Was that during a time when Rite
4 Aid still self-distributed Schedule III
5 substances?
6 A. I don't believe so, but I'm not
7 sure.
8 Q. So prior to you having
9 jurisdiction over McKesson thresholds, Sophia
10 Lai, or she changed her name to Novack, she had
11 authority over McKesson thresholds --
12 MS. McENROE: Objection.
13 BY MR. PIFKO:
14 Q. -- with respect to the extent
15 there was anyone at Rite Aid who had authority
16 over it?
17 MS. McENROE: Objection to form.
18 THE WITNESS: Yes. The McKesson
19 thresholds rested with Sophia in asset
20 protection.
21 BY MR. PIFKO:
22 Q. So if a pharmacy wanted to make a
23 request to exceed a McKesson threshold, they had
24 to first go through Ms. Lai; is that correct?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: That is correct.
3 BY MR. PIFKO:
4 Q. Are you familiar with any
5 criteria that Ms. Lai would use to evaluate
6 whether a pharmacy was allowed to make such a
7 request to McKesson?
8 MS. McENROE: Objection to form.
9 And again, you already elicited the
10 testimony that Rite Aid did not consider
11 the McKesson thresholds to be part of the
12 suspicious order monitoring.
13 MR. PIFKO: You're giving a
14 speaking objection. You can't do that.
15 You've got to stop --
16 MS. McENROE: You said I could
17 have 10 seconds. And you're going far
18 beyond --
19 MR. PIFKO: No, no. I didn't say
20 you could have 10 seconds. You can
21 object to scope and that's it. You're
22 coaching the witness. You need to stop.
23 MS. McENROE: I'm not coaching
24 the witness. I'm trying to speak to you.

| | |
|---|--|
| <p style="text-align: right;">Page 146</p> <p>1 MR. PIFKO: You're speaking here, 2 you're giving testimony. 3 MS. McENROE: Do you want to go 4 off the record -- 5 MR. PIFKO: No. 6 MS. McENROE: -- and you and I 7 can go talk in the hallway? 8 MR. PIFKO: No, I don't. 9 MS. McENROE: Then that's fine. 10 MR. PIFKO: I want you to object 11 properly. 12 MS. McENROE: I'm objecting just 13 fine. You are all over the place. 14 MR. PIFKO: Okay. 15 MS. McENROE: Can you tell me 16 which 30(b)(6) topic -- 17 MR. PIFKO: No. I'm asking the 18 questions here. Okay? 19 MS. McENROE: -- you are talking 20 about? 21 MR. PIFKO: If you want to -- 22 MS. McENROE: I understand you're 23 asking questions, but you're way beyond 24 the scope. She already gave you</p> | <p style="text-align: right;">Page 148</p> <p>1 scope of it after the deposition is over. 2 MS. McENROE: Objection as to 3 scope. 4 BY MR. PIFKO: 5 Q. Okay. So my question for you 6 was, do you know if Ms. Lai had any criteria that 7 she would evaluate as far as whether a pharmacy 8 was allowed to make a request to McKesson to 9 exceed the McKesson threshold? 10 MS. McENROE: Objection to form, 11 objection to scope. 12 THE WITNESS: I'm sure she had 13 criteria. I don't -- I'm not familiar 14 with what her criteria were. 15 BY MR. PIFKO: 16 Q. Did you ever discuss her 17 reviewing of McKesson thresholds with her? 18 MS. McENROE: Objection to form, 19 objection to scope. 20 THE WITNESS: We did discuss, 21 yes. 22 BY MR. PIFKO: 23 Q. What was the nature of your 24 discussion?</p> |
| <p style="text-align: right;">Page 147</p> <p>1 testimony, this isn't part of our 2 suspicious order monitoring program. 3 Where is your basis for asking the 4 question? 5 MR. PIFKO: Are you done 6 speaking? Are you done speaking? 7 MS. McENROE: Are you just not 8 going to tell me? 9 MR. PIFKO: You're interrupting 10 the deposition. Okay? 11 MS. McENROE: Are you not going 12 to tell me? 13 MR. PIFKO: You can object to 14 form. You can object to scope. Other 15 than that, you need to be quiet. 16 MS. McENROE: Well, I'm going to 17 take that as a concession that you don't 18 have a 30(b)(6) topic, so a full -- 19 MR. PIFKO: I'm not conceding 20 anything. 21 MS. McENROE: -- line of 22 questioning is improper. 23 MR. PIFKO: I'm asking my 24 questions. Okay? We can fight about the</p> | <p style="text-align: right;">Page 149</p> <p>1 A. Looking at various doctors as 2 related to the thresholds. And she would ask if 3 a particular store who was the top prescriber and 4 we could run a prescriber activity report for her 5 to review, things along those lines. 6 Q. And that's something that she 7 would do in the course of evaluating a threshold 8 request? 9 MS. McENROE: Objection. 10 Objection to form, objection to scope. 11 THE WITNESS: To the best of my 12 knowledge, yes. 13 BY MR. PIFKO: 14 Q. She reported to you during this 15 time? 16 A. She did not. 17 Q. Okay. Oh, you said she was in 18 asset protection; is that correct? 19 A. Yes. 20 Q. Who did she report to? 21 A. Bob Oberosler. 22 Q. So yesterday you recall 23 discussing this store. Correct? If you go -- 24 it's on the second page, 3151.</p> |

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1 A. Yes.

2 Q. You just explained that when a

3 threshold request was made, there would be

4 occasions when you would run a top prescriber

5 report?

6 MS. McENROE: Again, objection to

7 form, objection to scope.

8 THE WITNESS: Yes.

9 BY MR. PIFKO:

10 Q. Was that a policy of the company,

11 that if there was going to be a threshold

12 increase, you have to run a prescriber report?

13 MS. McENROE: Objection to form,

14 objection to scope.

15 THE WITNESS: I don't know what

16 Sophia's policy was or what asset

17 protection policy was as far as approving

18 McKesson thresholds.

19 BY MR. PIFKO:

20 Q. How about for a Rite Aid

21 threshold? If you were going to approve an

22 increase of a Rite Aid threshold, did you run a

23 prescriber report?

24 A. Typically, no.

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1 Q. Do you have any understanding as

2 to why one would run a prescriber report when you

3 were going to exceed a McKesson threshold but not

4 for Rite Aid?

5 MS. McENROE: Objection to form,

6 objection to scope.

7 THE WITNESS: That was just the

8 policy from the Rite Aid perspective.

9 BY MR. PIFKO:

10 Q. You said from time to time Ms.

11 Lai discussed prescribers with you in connection

12 with these types of requests. Correct?

13 A. True, yes.

14 Q. Do you recall this particular

15 request and this particular physician?

16 MS. McENROE: Objection to form,

17 objection to scope.

18 THE WITNESS: I don't recall

19 discussing a Dr. Adolph Harper with

20 Sophia.

21 BY MR. PIFKO:

22 Q. It says here on the second page

23 of the document, at the -- towards the top, Mary

24 Menegay -- am I saying that right?

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1 A. Menegay.

2 Q. Okay, Menegay.

3 Writes to, it looks like, Ms.

4 Lai.

5 Who is Mary?

6 A. She would be the pharmacy

7 district manager.

8 Q. So is this consistent with what

9 you said before about a store maybe would need to

10 talk to the district manager first?

11 MS. McENROE: Objection to form.

12 THE WITNESS: Correct.

13 BY MR. PIFKO:

14 Q. Okay. So that's your

15 understanding of why Mary's involved in this

16 discussion?

17 A. Yes. She's the pharmacy district

18 manager. It's on -- it's on the paper.

19 Q. Okay. And you see her, it says,

20 "The orders are needed" -- Mary writes, "The

21 orders are needed. There is increased activity

22 from a local pain management doctor. Cx who were

23 previously filling at store 3151 are now coming

24 to 3182. Can the threshold be increased?"

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1 Do you see that?

2 A. I do.

3 Q. What does Cx mean in the context

4 of this sentence, do you know?

5 A. Customer.

6 Q. Okay. So it's saying there's

7 increased volume at store 3151 and 3182 because

8 of customers from this doctor.

9 You agree?

10 MS. McENROE: Objection to form,

11 misstates the record.

12 THE WITNESS: I believe it's

13 stating that the customers are moving

14 from store 3151 to store 3182.

15 BY MR. PIFKO:

16 Q. Okay. But that -- you also agree

17 that it's increased activity apparently from this

18 particular doctor. Correct?

19 MS. McENROE: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. PIFKO:

22 Q. On occasions when Ms. Lai would

23 discuss prescribers with you, what would be the

24 nature of those discussions?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: We may do a
3 prescriber analysis. We would look at an
4 individual prescriber and determine their
5 book of business. We would at times run
6 a prescriber activity report from the
7 Rite Aid system to look at the types of
8 prescriptions that we were filling for
9 that prescriber. It all depends.
10 Back in 2011, we would have had
11 access to Rite Aid data to look at as far
12 as what prescriptions were being
13 dispensed.
14 BY MR. PIFKO:
15 Q. So when you say -- I want to ask
16 a couple details on some of those things you
17 said.
18 When you say you would look at an
19 individual prescriber and determine their book of
20 business, what did you mean by that?
21 A. I mean we would look at the types
22 of prescriptions that they were writing for,
23 break them out if they were a Schedule II, III,
24 IV or V, or a noncontrolled prescription. We

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1 would look at the percentage of the controlled
2 substance versus the non-controlled substance
3 that the doctor was prescribing for. We would
4 look at the prescriber's specialty to determine
5 if there was -- if it was a pain management
6 doctor, obviously there would be additional
7 perhaps opioids that would be needed. So we
8 would look at various items like that.
9 Q. What would the purpose of that
10 inquiry be? Why would you be looking at those
11 things?
12 MS. McENROE: Objection to form,
13 objection to scope.
14 THE WITNESS: We would look at
15 those things to determine if the
16 prescriber had a valid -- had a -- if the
17 prescriber was prescribing within their
18 scope of practice and within normal
19 range.
20 BY MR. PIFKO:
21 Q. So you would look at the types of
22 prescriptions and the nature of the doctor's
23 practice to see if the prescriptions being
24 written are consistent with what one would expect

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1 to see from that type of doctor?
2 MS. McENROE: Objection to form,
3 objection to scope.
4 THE WITNESS: Yes.
5 BY MR. PIFKO:
6 Q. And the purpose of doing that is
7 to identify a potential red flag?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: It would be to
11 identify, yes, a suspicious prescriber.
12 BY MR. PIFKO:
13 Q. So if you saw a doctor writing
14 high volumes of prescriptions of concern, that
15 could be a red flag?
16 MS. McENROE: Objection to form,
17 objection to scope.
18 THE WITNESS: Just simply writing
19 high volumes of controlled substances is
20 not a red flag based on their specialty.
21 Like you will see orthopedic doctors are
22 going to have a high amount of controlled
23 substances after surgeries. So just
24 because there's a high amount of

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1 controlled substances doesn't necessarily
2 mean that there's a red flag.
3 BY MR. PIFKO:
4 Q. Have you heard of the concept
5 "the holy trinity"?
6 MS. McENROE: Objection to form,
7 objection to scope.
8 THE WITNESS: I have.
9 BY MR. PIFKO:
10 Q. What does that mean to you?
11 A. The holy trinity is an opioid, a
12 benzodiazepam -- benzodiazepine and a muscle
13 relaxant prescribed for a person at one time.
14 Q. Is that a red flag?
15 MS. McENROE: Objection to form,
16 objection to scope.
17 THE WITNESS: The trinity is a
18 red flag, yes.
19 BY MR. PIFKO:
20 Q. And why is that a red flag?
21 MS. McENROE: Objection to form,
22 objection to scope.
23 THE WITNESS: The DEA has come
24 out and stated that there should be no

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1 reason why a prescriber should prescribe
2 those three medications for one patient
3 at one time.
4 BY MR. PIFKO:
5 Q. Would you also look at the nature
6 of the patients when you ran some of this
7 prescriber level analysis?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We would look at
11 patients if one -- when we ran our
12 analysis, if one patient stood out, we
13 would look at a particular patient, yes.
14 BY MR. PIFKO:
15 Q. Would you look at the actual
16 scripts that were written?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: We would look at
20 original scripts as well.
21 BY MR. PIFKO:
22 Q. Would you look at the conditions
23 for which the prescription was being written?
24 MS. McENROE: Objection to form,

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1 objection to scope.
2 THE WITNESS: We would look if
3 there was a description.
4 BY MR. PIFKO:
5 Q. Okay. But you wouldn't -- what
6 would you do -- if there was a description, what
7 would you do with that information?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: It would remain on
11 the prescription.
12 BY MR. PIFKO:
13 Q. But would you look if there
14 was -- a prescription was being written for a
15 medication that the reason on the prescription
16 seemed unusual to you?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: Yes.
20 BY MR. PIFKO:
21 Q. And what would you do with that
22 information?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: We would look at
2 the patient profile and look at the type
3 of the prescriber and review it.
4 BY MR. PIFKO:
5 Q. Would you look at the physical
6 location of the prescriber in relationship to the
7 patient?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We could look at
11 that, yes.
12 BY MR. PIFKO:
13 Q. You would agree that one red flag
14 is if you have patients from out of the area
15 filling a prescription, that could be a red flag?
16 MS. McENROE: Objection to form,
17 objection to scope.
18 THE WITNESS: Patients traveling
19 distance to get a prescription filled
20 could be a red flag or it may not be a
21 red flag.
22 BY MR. PIFKO:
23 Q. Would you agree that -- in what
24 situation would it be a red flag?

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: It could possibly
4 be a red flag if a patient lived two
5 hours away from a pharmacy and drove by
6 two other pharmacies to get to the
7 pharmacy where they were filling it.
8 BY MR. PIFKO:
9 Q. What about if a doctor is from
10 out of the area and the patient is bringing a
11 script from a far away doctor? Is that a red
12 flag?
13 MS. McENROE: Objection to form,
14 objection to scope.
15 THE WITNESS: Again, it all
16 depends on the type of doctor, where the
17 patient and the pharmacy is located.
18 There are things to consider if it's,
19 say, Johns Hopkins -- if the doctor is
20 from Johns Hopkins and the patient is
21 filling it on the Eastern Shore of
22 Maryland, I wouldn't -- that may not be a
23 red flag as obviously Johns Hopkins is a
24 medical hub type thing.

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1 BY MR. PIFKO:
2 Q. On these occasions when you would
3 run these prescriber analyses, would you document
4 your findings?
5 MS. McENROE: Objection to form,
6 objection to scope.
7 THE WITNESS: We would maintain a
8 file on the doctor.
9 Again, this was Sophia, but -- in
10 this instance, but if we were reviewing
11 doctors, yes, we would maintain a file on
12 that doctor.
13 BY MR. PIFKO:
14 Q. What would that file be called?
15 MS. McENROE: Objection to form,
16 objection to scope.
17 THE WITNESS: The file would be
18 the DEA number of the doctor and their
19 name.
20 BY MR. PIFKO:
21 Q. Is there some sort of specific
22 use that you would do with that file?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: We just store it on
2 our drives.
3 BY MR. PIFKO:
4 Q. Would there be occasions if you
5 found -- I believe you said on certain occasions
6 there can be a suspicious prescriber; is that
7 correct?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: That is correct.
11 BY MR. PIFKO:
12 Q. If you found a prescriber to be a
13 suspicious prescriber, what would you do?
14 MS. McENROE: Objection to form,
15 objection to scope.
16 THE WITNESS: If we found a
17 suspicious prescriber, we would then look
18 at the profile, verify the profile and
19 send out a clinic protocol to the field
20 teams, the asset protection district
21 manager and the pharmacy district
22 manager, to go and visit the prescriber's
23 office.
24 BY MR. PIFKO:

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1 Q. And what would the nature of the
2 visit to the prescriber's office be?
3 MS. McENROE: Objection to form,
4 objection to scope.
5 THE WITNESS: We have all of the
6 data in front of us, but we don't know
7 what the office looks like, if it's a
8 functioning office, if it's in an office
9 building that would look like a
10 physician's office. And so the PDM and
11 the APDM are responsible for sending back
12 pictures of the doctor's office if
13 possible, looking at the doctor's office
14 to determine if there are people walking
15 in and out and getting prescriptions
16 every five minutes and not what would be
17 a normal doctor visit.
18 So they would be the eyes and
19 ears looking for things like that.
20 BY MR. PIFKO:
21 Q. When you said PDM, you meant
22 pharmacy district manager?
23 A. Yes.
24 Q. And APM is assistant pharmacy

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1 manager?
2 A. Asset protection.
3 Q. Okay. Thank you.
4 In connection with those visits,
5 would they speak to the doctor?
6 MS. McENROE: Objection to form,
7 objection to scope.
8 THE WITNESS: They would ask to
9 speak with office staff or to speak with
10 the doctor. They would provide
11 information on Rite Aid, such as the
12 ability to get a flu shot at Rite Aid,
13 things along those lines.
14 BY MR. PIFKO:
15 Q. Would they tell the doctor that
16 they were investigating that doctor as a
17 potentially suspicious prescriber?
18 MS. McENROE: Objection to form,
19 objection to scope.
20 THE WITNESS: They would not.
21 BY MR. PIFKO:
22 Q. So then at some point this
23 inquiry into the suspicious prescriber reaches
24 some resolution. Agreed?

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: Yes.
4 BY MR. PIFKO:
5 Q. If Rite Aid finds that a
6 prescriber is a suspicious prescriber after
7 finishing that investigation, what does it do?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We have the
11 pictures come back and we have a file of
12 all the data that we've run. And at that
13 point, if there's -- if we believe that
14 it is a suspicious prescriber, we have a
15 committee of three pharmacists at our
16 corporate office that will sit down and
17 look at the data, look at the pictures,
18 and make a determination if that
19 prescriber is a book of business that we
20 wanted or not.
21 BY MR. PIFKO:
22 Q. So ultimately a decision could be
23 made not to service prescriptions from that
24 doctor; is that correct?

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: Controlled
4 substance prescriptions, yes.
5 BY MR. PIFKO:
6 Q. To your knowledge, has that
7 happened on occasion?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: It has.
11 BY MR. PIFKO:
12 Q. And when Rite Aid makes a
13 determination that they're not going to service a
14 prescriber anymore because they deem that
15 prescriber's practice to be sufficiently
16 suspicious, what would they do to implement that
17 decision?
18 MS. McENROE: Objection to form,
19 objection to scope.
20 THE WITNESS: Once the three
21 pharmacists at the corporate office sign
22 off that it's a book of business that we
23 don't want for the controlled substance,
24 then I notify the prescriber in a letter

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1 that states that because of the
2 prescription of oxycodone, or whatever
3 the drug may be, that effective at a
4 certain date, Rite Aid will no longer
5 dispense controlled substance
6 prescriptions under their DEA number.
7 BY MR. PIFKO:
8 Q. Do they have an appeal process or
9 anything or is that decision final once it's
10 made?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: Typically when we
14 get to that point, they may call and ask
15 for an appeal, but when we reach that
16 decision, that's a very serious decision
17 that we don't take lightly. So typically
18 there is no appeal.
19 BY MR. PIFKO:
20 Q. To your knowledge, has that
21 happened ever?
22 MS. McENROE: Objection to form,
23 objection to scope.
24 THE WITNESS: Has what happened?

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1 BY MR. PIFKO:
2 Q. You've made a determine to stop
3 servicing business from a particular prescriber?
4 MS. McENROE: Objection to form,
5 objection to scope.
6 THE WITNESS: Yes, we have.
7 BY MR. PIFKO:
8 Q. Do you have a rough estimate
9 about how many times it's happened in your
10 career?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: Over 150 times.
14 BY MR. PIFKO:
15 Q. That number came rather quickly.
16 You feel like that's a --
17 A. Very close, yes.
18 MS. McENROE: Objection to form,
19 objection to scope.
20 BY MR. PIFKO:
21 Q. Okay. Do you keep statistics on
22 that somewhere?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: We do.
2 BY MR. PIFKO:
3 Q. That's a statistic that you have
4 reviewed in the recent past?
5 MS. McENROE: Objection to form,
6 objection to scope.
7 THE WITNESS: I'm familiar with
8 it on a daily basis.
9 BY MR. PIFKO:
10 Q. That's something you check every
11 day?
12 MS. McENROE: Objection to form,
13 objection to scope.
14 THE WITNESS: Not every day, but
15 at least monthly.
16 BY MR. PIFKO:
17 Q. Can a doctor get reinstated after
18 they've been terminated?
19 MS. McENROE: Objection to form,
20 objection to scope.
21 THE WITNESS: Yes. A doctor can
22 get reinstated.
23 BY MR. PIFKO:
24 Q. Is there a formal process that

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1 they have to follow?
2 MS. McENROE: Objection to form,
3 objection to scope.
4 THE WITNESS: The doctor makes a
5 request of -- from myself that they would
6 like to be reinstated. And then I go in
7 and look at the prescriber's history.
8 So let's say it's been a year
9 since we shut the doctor off. What then
10 happens is he requests to be reinstated a
11 year later. I would look at that
12 doctor's history for the year, his
13 prescribing pattern for that year, to
14 determine if it has changed from when we
15 shut the person off.
16 BY MR. PIFKO:
17 Q. But you wouldn't have a history
18 on the substances, the controlled substances that
19 you shut off because you weren't servicing that.
20 Correct?
21 MS. McENROE: Objection to form,
22 objection to scope.
23 THE WITNESS: That is not
24 correct. We have a tool -- from 2013 on,

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1 we had a tool that was through IQVIA that
2 would provide industry data deidentified
3 for about 87 percent of retail
4 pharmacists.
5 BY MR. PIFKO:
6 Q. Okay. When you found that a
7 store has been servicing a suspicious prescriber,
8 have you ever undertaken anything to flag the
9 orders from that pharmacy as suspicious?
10 MS. McENROE: Objection to form,
11 objection to scope.
12 THE WITNESS: Could you repeat
13 the question, please?
14 BY MR. PIFKO:
15 Q. So if a store is filling
16 prescriptions from a physician who's been
17 determined to be a suspicious prescriber, does
18 Rite Aid undertake any effort to identify orders
19 from that store as suspicious as a result of them
20 being from the suspicious prescriber?
21 MS. McENROE: Objection to form.
22 THE WITNESS: One more time, I'm
23 sorry.
24 BY MR. PIFKO:

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1 Q. If a store is filling
2 prescriptions from a prescriber who's been
3 determined to be a suspicious prescriber, does
4 Rite Aid undertake any efforts to identify the
5 orders that come from that store -- during the
6 time when that suspicious prescriber was sending
7 patients to that store, does Rite Aid undertake
8 any effort to identify those orders as
9 suspicious?
10 MS. McENROE: Objection to form.
11 THE WITNESS: We do not.
12 BY MR. PIFKO:
13 Q. So Rite Aid does not use any of
14 the suspicious prescriber information that it may
15 have collected in determining whether an order
16 from any location is suspicious. Correct?
17 MS. McENROE: Objection to form.
18 THE WITNESS: The order has
19 already been shipped to the store, so
20 there's -- that's not incorporated -- the
21 suspicious prescriber isn't incorporated
22 in.
23 BY MR. PIFKO:
24 Q. What about when an investigation

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1 is going on, does Rite Aid undertake any effort
2 to look at the orders that are continuing to come
3 in as a result of prescriptions being placed
4 through that doctor?
5 MS. McENROE: Objection to form.
6 THE WITNESS: We continue to
7 monitor the prescriptions that would be
8 coming in, but we do not consider that a
9 suspicious order to place.
10 BY MR. PIFKO:
11 Q. So I believe we -- I asked you a
12 little bit earlier, do you remember discussing
13 this doctor, Dr. Harper?
14 MS. McENROE: Objection to form,
15 objection to scope.
16 THE WITNESS: I don't remember
17 discussing the doctor with Sophia.
18 BY MR. PIFKO:
19 Q. This is a -- this Exhibit 5, as
20 you see from the first page of the document, is a
21 request to increase the threshold through
22 McKesson for oxycodone.
23 Do you see that?
24 MS. McENROE: Objection to form,

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1 objection to scope.
2 THE WITNESS: Where is it
3 highlighted?
4 BY MR. PIFKO:
5 Q. On the first page there.
6 A. On the --
7 Q. If you look on the screen in
8 front of you.
9 A. It wasn't highlighted on my
10 screen.
11 Q. Oh.
12 A. Yes, I see the request.
13 Q. That's not a substance that Rite
14 Aid self-distributed. Correct?
15 A. Correct.
16 - - -
17 (Deposition Exhibit No.
18 Hart-30(b)(6)-6, Email dated 2011-02-01,
19 Bates stamped Rite_Aid_OMDL_0013134
20 through Rite_Aid_OMDL_0013136, was marked
21 for identification.)
22 - - -
23 BY MR. PIFKO:
24 Q. I'm handing you what's marked as

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1 Exhibit 6.
2 For the record, Exhibit 6 is a
3 three-page document Bates labeled
4 Rite_Aid_OMDL_0013134 through 36.
5 Please take a moment to look at
6 that and let me know when you're done.
7 A. (Reviewing document.)
8 Q. Have you seen this document
9 before?
10 A. I don't believe so, no.
11 Q. In reviewing this, do you know
12 what this document is?
13 A. The document is a email from
14 Andrea Bucher to Marian and Kevin Mitchell about
15 a hydrocodone threshold at Rite Aid 3151.
16 Q. If you go to the second page of
17 the document, it's a screenshot of an email.
18 Do you see that?
19 A. I do.
20 Q. It's making a request to increase
21 the hydrocodone threshold at store 3151.
22 Do you see that?
23 A. I do.
24 Q. And the email is -- has a date on

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1 the top of having been replied to December 7,
2 2010.
3 Do you see that?
4 A. I do.
5 Q. Do you know what this discussion
6 is that's reflected on the second page of
7 Exhibit 6?
8 MS. McENROE: Objection to form.
9 THE WITNESS: It -- that Andrea
10 is sending an email to Marian and
11 Kimberly to increase the threshold for
12 hydrocodone at 3151.
13 BY MR. PIFKO:
14 Q. And this is a Rite Aid threshold
15 request, as opposed to a McKesson threshold
16 request.
17 Do you agree?
18 A. I agree.
19 Q. Do you recall, this is something
20 that would have required your approval. Correct?
21 MS. McENROE: Objection to form.
22 THE WITNESS: I'm not sure if at
23 one point I gave authorization to Andrea
24 to be able to do it, but I will say that

| | |
|--|--|
| <p style="text-align: right;">Page 178</p> <p>1 McKesson -- that Rite Aid thresholds were 2 my responsibility. 3 BY MR. PIFKO: 4 Q. So you would have had 5 responsibility for approving this threshold 6 increase. Right? 7 MS. McENROE: Objection to form. 8 THE WITNESS: Correct. 9 BY MR. PIFKO: 10 Q. At some point, if you go to the 11 first page of Exhibit 6, the second page is -- 12 just discusses that it appears that the Liverpool 13 Distribution Center was servicing that pharmacy. 14 Do you agree? 15 A. I do. 16 Q. And then if you look on the first 17 page, it looks like the Perryman facility is then 18 going to be taking over responsibility for 19 distributing to that store. 20 Do you agree? 21 A. I do. 22 Q. DC 10 is Perryman? 23 A. Yes. 24 Q. What do you understand the</p> | <p style="text-align: right;">Page 180</p> <p>1 Prescribing Painkillers," was marked for 2 identification.) 3 - - - 4 BY MR. PIFKO: 5 Q. I'm handing you what was 6 previously marked as Novack Exhibit 8 and I'm 7 marking here as Hart-30(b)(6) Exhibit 7. 8 Please take a moment to review 9 this. Note it's double sided. 10 Let me know when you're done. 11 MS. McENROE: I'm also going to 12 make another scope objection for the 13 record. 14 THE WITNESS: (Reviewing 15 document.) 16 I'm done. 17 BY MR. PIFKO: 18 Q. Have you seen this before? 19 A. Yes. 20 Q. When was the last time you saw 21 this? 22 A. Within the past several days. 23 Q. This is something you reviewed in 24 preparing for this deposition?</p> |
| <p style="text-align: right;">Page 179</p> <p>1 discussion on page -- the first page of Exhibit 6 2 to be reflecting? 3 MS. McENROE: Objection, form. 4 THE WITNESS: That the override 5 threshold that was in place for 3151 from 6 Liverpool was being transferred, since 7 the store was now being picked from 8 Perryman. 9 BY MR. PIFKO: 10 Q. This is one of the same stores 11 that's reflected in Exhibit 5. Agreed? 12 MS. McENROE: Objection to form. 13 THE WITNESS: Yes. 14 BY MR. PIFKO: 15 Q. This store that they're noting 16 had an increase in activity from this pain 17 management doctor. Agreed? 18 MS. McENROE: Objection to form, 19 objection to scope. 20 THE WITNESS: Yes. 21 - - - 22 (Deposition Exhibit No. 23 Hart-30(b)(6)-7, Press Release entitled 24 "Akron Doctor Pleads Guilty to Illegally</p> | <p style="text-align: right;">Page 181</p> <p>1 A. Yes. 2 Q. Do you see the first sentence 3 here above the -- the headline reads, "Akron 4 Doctor Pleads Guilty to Illegally Prescribing 5 Painkillers." 6 Do you see that? 7 A. I do. 8 Q. It's dated October 20, 2014. 9 Do you see that? 10 A. I do. 11 Q. Do you see the first sentence 12 here, it says, "An Akron physician pleaded guilty 13 to illegally prescribing hundreds of thousands of 14 doses of painkillers and other pills to customers 15 for no legitimate medical purpose, even after he 16 learned some customers had died from 17 overdose-related deaths, law enforcement 18 officials said." 19 Do you see that? 20 A. I do. 21 Q. Did Rite Aid institute efforts to 22 shut this particular doctor down from its -- 23 serving his customers? 24 MS. McENROE: Objection to form,</p> |

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1 objection to scope.
2 THE WITNESS: I don't remember.
3 - - -
4 (Deposition Exhibit No.
5 Hart-30(b)(6)-8, Indictment, Case No.:
6 5:14CR096, was marked for
7 identification.)
8 - - -
9 BY MR. PIFKO:
10 Q. I'm handing you what was
11 previously marked as Novack Exhibit 7 and I've
12 also marked here as Hart-30(b)(6) Exhibit 8. For
13 the record, it's an indictment of Dr. Harper.
14 MS. McENROE: For the record,
15 again, objection as to scope. And can
16 you tie this to any of the 30(b)(6)
17 topics? Because the witness already
18 said --
19 BY MR. PIFKO:
20 Q. It's dated March 25, 2014.
21 Please take a moment to review
22 this document and let me know when you're done.
23 MS. McENROE: I'm going to take
24 that as a no for purposes of the record.

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1 MR. PIFKO: I'm disagreeing with
2 your characterization. You can object to
3 scope. And I'm not going to answer
4 questions from you.
5 THE WITNESS: (Reviewing
6 document.)
7 BY MR. PIFKO:
8 Q. As an initial matter, have you
9 seen this document before?
10 A. I have.
11 Q. When did you see this?
12 A. The past several days.
13 Q. Is this something you reviewed in
14 connection with preparing for this 30(b)(6)
15 deposition?
16 A. It is.
17 Q. You can feel free to look at it
18 as much as you want to, but I want to just ask
19 you, on the second page here, it notes that Dr.
20 Harper had issues with Schedule III substances.
21 Do you see that? At the top of
22 the second page.
23 MS. McENROE: Objection to form.
24 Where are you looking, Mark? I'm sorry,

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1 I don't see what paragraph.
2 MR. PIFKO: It's paragraph 1. It
3 continues from the bottom of the first
4 page to the top of the second page.
5 MS. McENROE: And objection to
6 the scope as well.
7 THE WITNESS: I see hydrocodone.
8 BY MR. PIFKO:
9 Q. And specifically it says that Dr.
10 Harper and some of his colleagues, who they refer
11 to as the Harper Drug Trafficking Organization,
12 it says, starting on the first page that they
13 "agreed to illegally distribute hundreds of
14 thousands of doses of prescription painkillers to
15 customers located in the Northern District of
16 Ohio and elsewhere. They did so using ADOLPH
17 HARPER, JR.'S 'medical' offices located in Akron,
18 Ohio, by issuing drug orders purporting to be
19 'prescriptions' for Schedule II controlled
20 substances, primarily oxycodone, oxymorphone,
21 methadone, and amphetamines, Schedule III
22 controlled substances, primarily buprenorphine
23 and hydrocodone, and Schedule IV controlled
24 substances." It continues on.

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1 Do you see that?
2 MS. McENROE: Objection to form,
3 objection to scope.
4 THE WITNESS: I do.
5 BY MR. PIFKO:
6 Q. So you agree that part of this
7 indictment concerns Schedule III substances?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: I do.
11 BY MR. PIFKO:
12 Q. And those were substances that
13 Rite Aid self-distributed during this time
14 period. Agree?
15 MS. McENROE: Objection to scope.
16 THE WITNESS: The hydrocodone was
17 distributed by Rite Aid.
18 BY MR. PIFKO:
19 Q. Did Rite Aid ever identify any
20 orders from the pharmacies that serviced Dr.
21 Harper's customers as suspicious?
22 MS. McENROE: Objection to form.
23 THE WITNESS: Could you repeat
24 the question? I'm sorry.

| | |
|---|---|
| <p style="text-align: right;">Page 186</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Yeah.</p> <p>3 Did Rite Aid ever identify any</p> <p>4 orders from the pharmacies that serviced Dr.</p> <p>5 Harper's customers as suspicious?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 THE WITNESS: To the best of my</p> <p>8 knowledge, no.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. Do you know if Rite Aid was aware</p> <p>11 of this indictment on or around the time that it</p> <p>12 occurred?</p> <p>13 MS. McENROE: Object to the form,</p> <p>14 objection to scope.</p> <p>15 THE WITNESS: I do not know.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Does Rite Aid track whether any</p> <p>18 prescribers and -- who have customers that come</p> <p>19 to Rite Aid stores are indicted?</p> <p>20 MS. McENROE: Objection to form,</p> <p>21 objection to scope.</p> <p>22 THE WITNESS: We do not.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. Does Rite Aid track whether</p> | <p style="text-align: right;">Page 188</p> <p>1 Hart-30(b)(6)-9, Press Release, "Rite Aid</p> <p>2 Corporation and Subsidiaries Agree to Pay</p> <p>3 \$5 Million in Civil Penalties to Resolve</p> <p>4 Violations in Eight States of the</p> <p>5 Controlled Substances Act," 2 pages, was</p> <p>6 marked for identification.)</p> <p>7 - - -</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Take a moment to review that.</p> <p>10 If you recall, there was a brief</p> <p>11 discussion of this yesterday.</p> <p>12 MS. McENROE: Again, for the</p> <p>13 record, objection as to scope as to the</p> <p>14 line of questioning pertaining to this</p> <p>15 exhibit as outside the scope of the</p> <p>16 30(b)(6) topics.</p> <p>17 THE WITNESS: (Reviewing</p> <p>18 document.)</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. Have you seen this document</p> <p>21 before?</p> <p>22 A. I have.</p> <p>23 Q. When was the last time you saw</p> <p>24 this?</p> |
| <p style="text-align: right;">Page 187</p> <p>1 prescribers have lost their licenses?</p> <p>2 MS. McENROE: Objection to form,</p> <p>3 objection to scope.</p> <p>4 THE WITNESS: We have a database</p> <p>5 in our NextGen system that updates the</p> <p>6 prescriber file on a daily basis. Once a</p> <p>7 DEA license becomes invalid, that license</p> <p>8 becomes invalid in our system and no</p> <p>9 prescriptions can be dispensed under that</p> <p>10 prescriber's DEA number. It's a national</p> <p>11 database that's out there.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. How long has that been in place?</p> <p>14 MS. McENROE: Objection to scope.</p> <p>15 THE WITNESS: I'm going to say</p> <p>16 2000 -- late 2000s, early 2000 -- late</p> <p>17 2000s, like '9, '10, '11. That's just</p> <p>18 speculation. It could have been there</p> <p>19 before that, but...</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. I'm handing you what's marked as</p> <p>22 Hart-30(b)(6) Exhibit 9.</p> <p>23 - - -</p> <p>24 (Deposition Exhibit No.</p> | <p style="text-align: right;">Page 189</p> <p>1 A. Within the last several days.</p> <p>2 Q. This is a document that you</p> <p>3 reviewed in preparing for your 30(b)(6)</p> <p>4 deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell me what this is?</p> <p>7 MS. McENROE: Objection to form,</p> <p>8 objection to scope.</p> <p>9 THE WITNESS: It's an</p> <p>10 announcement of a settlement agreement</p> <p>11 between Rite Aid and the Drug Enforcement</p> <p>12 Administration from 2009.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Does this refresh your</p> <p>15 recollection about when Rite Aid instituted the</p> <p>16 system that it uses to check whether prescribers'</p> <p>17 DEA licenses are invalid?</p> <p>18 MS. McENROE: Objection to form,</p> <p>19 objection to scope.</p> <p>20 THE WITNESS: I don't know that</p> <p>21 that coincides. I couldn't say that for</p> <p>22 sure.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. You agree this happened in 2009?</p> |

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1 It says here -- it's dated -- this press release
2 is dated January 12, 2009. Do you agree?
3 MS. McENROE: Objection to form,
4 objection to scope.
5 THE WITNESS: I do.
6 BY MR. PIFKO:
7 Q. And you testified that you
8 believe that Rite Aid instituted its efforts to
9 check prescriber licenses sometime in 2009, '10
10 or '11; is that correct?
11 MS. McENROE: Objection to form.
12 THE WITNESS: I said that was --
13 I will correct the record then.
14 There was a system in place to
15 check licenses prior to that. There was
16 enhancement to the system as well.
17 BY MR. PIFKO:
18 Q. The enhancement was sometime in
19 2009, '10 or '11?
20 MS. McENROE: Objection to form.
21 THE WITNESS: Again, I don't know
22 the date line of that. I don't have that
23 knowledge.
24 BY MR. PIFKO:

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1 Q. Was that made as a result of this
2 settlement?
3 MS. McENROE: Objection to form,
4 objection to scope.
5 THE WITNESS: It was not.
6 BY MR. PIFKO:
7 Q. There are some bullet points here
8 about halfway down the page.
9 Do you see those?
10 A. I do.
11 Q. It talks about some of the
12 alleged violations that occurred in connection
13 with this settlement.
14 Do you see that?
15 A. I do.
16 MS. McENROE: Objection.
17 BY MR. PIFKO:
18 Q. One of them is that "Rite Aid
19 knowingly filled prescriptions for controlled
20 substances that were not issued for a legitimate
21 medical purpose pursuant to a valid
22 physician-patient relationship."
23 Do you see that?
24 MS. McENROE: Objection to scope.

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1 THE WITNESS: I see that.
2 BY MR. PIFKO:
3 Q. Do you agree that that was part
4 of the scope of the settlement agreement?
5 MS. McENROE: Objection to form,
6 objection to scope.
7 THE WITNESS: I do.
8 BY MR. PIFKO:
9 Q. It also says that, "Rite Aid
10 failed to notify the DEA in a timely manner of
11 significant thefts and losses of controlled
12 substances, thus permitting the diversion of
13 controlled substances to continue and undermining
14 DEA's ability to investigate such thefts...or
15 losses."
16 Do you see that?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: I do.
20 BY MR. PIFKO:
21 Q. Do you agree that that was part
22 of the 2009 settlement?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: I do.
2 BY MR. PIFKO:
3 Q. It also says, "Rite Aid failed to
4 properly execute DEA forms used to ensure that
5 the amount of Schedule II drugs ordered by Rite
6 Aid were actually received."
7 Do you see that?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: I do.
11 BY MR. PIFKO:
12 Q. Was that part of the settlement
13 as well?
14 MS. McENROE: Objection to form,
15 objection to scope.
16 THE WITNESS: That was part of
17 the settlement.
18 It should be noted that the Rite
19 Aid distribution center in Perryman was
20 not included or mentioned in the
21 settlement agreement.
22 BY MR. PIFKO:
23 Q. It says here in the paragraph
24 after those bullet points, part of the last

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1 sentence, that accountability audits reflected "a
 2 pattern of non-compliance with the requirements
 3 of the Controlled Substances Act and federal
 4 regulations that lead to the diversion of
 5 controlled substances."
 6 Do you see that?
 7 MS. McENROE: Objection to form,
 8 objection to scope.
 9 THE WITNESS: You lost me on that
 10 one.
 11 BY MR. PIFKO:
 12 Q. It's highlighted on the screen
 13 for you.
 14 A. Oh, okay. Sorry.
 15 I do.
 16 Q. Do you agree that that was part
 17 of the settlement?
 18 MS. McENROE: Objection to form,
 19 objection to scope.
 20 THE WITNESS: It was.
 21 BY MR. PIFKO:
 22 Q. There's a quote here from the DEA
 23 acting administrator, two paragraphs down, second
 24 to last paragraph on the first page there.

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1 It says, at the bottom of that
 2 paragraph, "Our nation's pharmacies must play a
 3 major role in the fight against drug abuse, so
 4 that together we can protect public health and
 5 keep our communities safe."
 6 Do you see that?
 7 MS. McENROE: Objection to form,
 8 objection to scope.
 9 THE WITNESS: I do.
 10 BY MR. PIFKO:
 11 Q. Do you agree with that statement?
 12 MS. McENROE: Objection to form,
 13 objection to scope.
 14 THE WITNESS: I do.
 15 MS. McENROE: Mark, when you get
 16 a chance, we've been going about an hour
 17 for a break.
 18 MR. PIFKO: Yeah.
 19 BY MR. PIFKO:
 20 Q. Did Rite Aid identify any
 21 suspicious orders as a result of any of the
 22 allegations in connection with the settlement?
 23 MS. McENROE: Objection to form.
 24 THE WITNESS: Can you repeat the

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1 question?
 2 BY MR. PIFKO:
 3 Q. Yeah.
 4 Like, for example, the settlement
 5 concerned Rite Aid knowingly filling
 6 prescriptions for controlled substances that were
 7 not issued for a legitimate medical purpose
 8 pursuant to a valid physician-patient
 9 relationship.
 10 Do you see that?
 11 MS. McENROE: Objection to form,
 12 objection to scope.
 13 THE WITNESS: I do.
 14 BY MR. PIFKO:
 15 Q. Did Rite Aid identify any
 16 suspicious orders as a result of prescriptions
 17 that were filled that were not issued for a
 18 legitimate medical purpose?
 19 MS. McENROE: Objection to form.
 20 THE WITNESS: We did not.
 21 MR. PIFKO: All right. We can
 22 take a break.
 23 THE WITNESS: Wait.
 24 THE VIDEOGRAPHER: Going off the

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1 record at 2 --
 2 THE WITNESS: Wait, wait. May I
 3 make a comment also, though?
 4 As part of the press release, it
 5 does state that "The settlement agreement
 6 is neither an admission of liability by
 7 Rite Aid nor a concession by the United
 8 States that its claims" were not founded.
 9 Thank you.
 10 THE VIDEOGRAPHER: Going off the
 11 record at 2:08 p.m.
 12 - - -
 13 (A recess was taken from
 14 2:08 p.m. to 2:23 p.m.)
 15 - - -
 16 THE VIDEOGRAPHER: Going back on
 17 the record at 2:23 p.m.
 18 - - -
 19 (Deposition Exhibit No.
 20 Hart-30(b)(6)-10, Order of the State
 21 Board of Pharmacy, Docket Number
 22 D-110127-163, was marked for
 23 identification.)
 24 - - -

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|---|--|
| <p style="text-align: right;">Page 198</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. I'm handing you what's marked as</p> <p>3 Exhibit 10.</p> <p>4 For the record, this is an order</p> <p>5 from the Ohio State Board of Pharmacy. The</p> <p>6 document itself is four pages. Take a moment to</p> <p>7 review it. Let me know when you're ready.</p> <p>8 The part I consider to be the</p> <p>9 document, just so you can understand, is this</p> <p>10 docket number D-110127-163, concerning Marcus --</p> <p>11 or Brian Marcus Kins.</p> <p>12 MS. McENROE: Starting in the</p> <p>13 middle of the first page?</p> <p>14 MR. PIFKO: Yeah.</p> <p>15 MS. McENROE: And then going</p> <p>16 until where, Mark?</p> <p>17 MR. PIFKO: It continues onto the</p> <p>18 last page, but only the top quarter of</p> <p>19 the last page.</p> <p>20 MS. McENROE: Where it says</p> <p>21 11:30 a.m.?</p> <p>22 MR. PIFKO: Yes.</p> <p>23 MS. McENROE: For the record, I'm</p> <p>24 going to object to this document and the</p> | <p style="text-align: right;">Page 200</p> <p>1 does work for Rite Aid?</p> <p>2 A. Yes.</p> <p>3 Q. When one serves on the Board of</p> <p>4 Pharmacy, is that concurrent with him working for</p> <p>5 Rite Aid?</p> <p>6 A. Yes.</p> <p>7 Q. So he still holds that -- does</p> <p>8 this Kevin Mitchell still work for Rite Aid?</p> <p>9 A. Yes. This Kevin Mitchell left</p> <p>10 from Rite Aid, went to work for the board, and</p> <p>11 came back to Rite Aid.</p> <p>12 Q. Okay.</p> <p>13 A. So he is currently a pharmacist</p> <p>14 for Rite Aid.</p> <p>15 Q. But he doesn't currently serve on</p> <p>16 the Board of Pharmacy?</p> <p>17 A. No. His term was up.</p> <p>18 Q. At the time that he was sitting</p> <p>19 on the Board of Pharmacy here, did he still work</p> <p>20 for Rite Aid?</p> <p>21 A. I don't -- I'm going to say yes,</p> <p>22 but again, my recollection could be wrong. But</p> <p>23 it looks around the time frame, yes.</p> <p>24 Q. Does anyone else who is a member</p> |
| <p style="text-align: right;">Page 199</p> <p>1 line of questioning that will be related</p> <p>2 to it as beyond the scope and not being</p> <p>3 tied to one of the topics.</p> <p>4 MR. PIFKO: You haven't heard the</p> <p>5 questions yet.</p> <p>6 MS. McENROE: I know. Just in</p> <p>7 terms of the document.</p> <p>8 THE WITNESS: (Reviewing</p> <p>9 document.)</p> <p>10 Okay.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. Have you seen this before?</p> <p>13 A. I have not.</p> <p>14 Q. It mentions here, as an aside,</p> <p>15 Kevin Mitchell here as being a member of the</p> <p>16 board of the Ohio Board of Pharmacy.</p> <p>17 I assume that's not the same</p> <p>18 Kevin Mitchell who works at Rite Aid?</p> <p>19 A. Okay.</p> <p>20 Q. Is it?</p> <p>21 A. This Kevin Mitchell is a</p> <p>22 pharmacist for Rite Aid in Ohio, not the Kevin</p> <p>23 Mitchell that's involved in this case.</p> <p>24 Q. Okay. So this Kevin Mitchell</p> | <p style="text-align: right;">Page 201</p> <p>1 of the board reflected here in that section under</p> <p>2 introduction work for Rite Aid?</p> <p>3 MS. McENROE: Objection, scope.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Do you know who Michael Mone is?</p> <p>7 A. Yes.</p> <p>8 Q. Who is he?</p> <p>9 A. Michael Mone works for Cardinal.</p> <p>10 Q. Do you know what he does for</p> <p>11 Cardinal?</p> <p>12 A. He is an attorney and a</p> <p>13 pharmacist and does regulatory affairs.</p> <p>14 Q. Do you know if he was employed by</p> <p>15 Cardinal at the time that he sat on the Board of</p> <p>16 Pharmacy here?</p> <p>17 MS. McENROE: Objection to scope.</p> <p>18 THE WITNESS: I don't know his</p> <p>19 employment.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. How do you know who Mr. Mone is?</p> <p>22 A. I am on the Pennsylvania State</p> <p>23 Board of Pharmacy here in the state, and I</p> <p>24 interact with Mr. Mone on a routine basis at NABP</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 meetings, National Association of Boards of 2 Pharmacy meetings, or district -- NABP district 3 meetings and occasionally at NACDS meetings. 4 Q. In connection with those kind of 5 meetings, do you meet with any other distributors 6 of pharmaceutical products? 7 MS. McENROE: Objection to form, 8 objection to scope. 9 THE WITNESS: Not really. And 10 Michael and I are there as members of the 11 Board of Pharmacy. We are not meeting on 12 behalf of our jobs. 13 BY MR. PIFKO: 14 Q. So, to your knowledge, you don't 15 meet with, for example, anyone who works for 16 AmeriSource Bergen at those meetings? 17 MS. McENROE: Objection, form, 18 objection to scope. 19 THE WITNESS: There could be 20 someone at one of those meetings. I 21 don't know a lot of people from 22 AmeriSource Bergen since we don't -- Rite 23 Aid doesn't do business with them. 24 BY MR. PIFKO:</p> | <p style="text-align: right;">Page 204</p> <p>1 objection to scope. 2 THE WITNESS: Not off the top of 3 my head, no. 4 BY MR. PIFKO: 5 Q. Do you know if any of the 6 defendants in this litigation are members of the 7 NACDS? 8 MS. McENROE: Objection to form, 9 objection to scope. 10 THE WITNESS: I would say yes. 11 BY MR. PIFKO: 12 Q. What's the basis for saying that? 13 MS. McENROE: Objection to scope. 14 THE WITNESS: Reading the 15 documentation as far as the case and 16 industry newsletters and things like 17 that. 18 BY MR. PIFKO: 19 Q. When you say documentation for 20 the case, you've seen documents that have a list 21 of defendants on it, like the interrogatory 22 responses, things like that? 23 A. Yeah. Or there could be 24 something published in like a Pharmacy Times or</p> |
| <p style="text-align: right;">Page 203</p> <p>1 Q. How about McKesson, is anyone 2 from McKesson at those meeting? 3 MS. McENROE: Objection to form, 4 objection to scope. 5 THE WITNESS: Occasionally, yes. 6 BY MR. PIFKO: 7 Q. Who from McKesson attends those 8 meetings? 9 MS. McENROE: Objection to form, 10 objection to scope. 11 THE WITNESS: I don't remember 12 who from McKesson. I apologize. 13 BY MR. PIFKO: 14 Q. How about from any of the 15 manufacturers, do you know if there are people at 16 those meetings who work for drug manufacturers? 17 MS. McENROE: Objection to form, 18 objection to scope. 19 THE WITNESS: At the NACDS 20 meetings? There are drug manufacturers 21 that are members of NACDS, yes. 22 BY MR. PIFKO: 23 Q. Do you know which ones? 24 MS. McENROE: Objection to form,</p> | <p style="text-align: right;">Page 205</p> <p>1 something like that. 2 Q. So you're talking about -- to the 3 extent there's been media coverage of the case 4 and you see who's involved, that's what you're 5 talking about? 6 MS. McENROE: Objection to form, 7 objection to scope. 8 THE WITNESS: Yes. 9 BY MR. PIFKO: 10 Q. Okay. Turning back to this 11 particular Exhibit 10, this incident here, are 12 you familiar with this pharmacist, Mr. Kins? 13 MS. McENROE: Objection to form. 14 Objection to form, objection to scope. 15 THE WITNESS: I am not. 16 BY MR. PIFKO: 17 Q. If you turn to the second page, 18 there's a heading "Findings of Fact." 19 Do you see that? 20 A. I do. 21 Q. There's numbered paragraphs there 22 with parentheses. 23 Do you see that? Like 1, 2? 24 A. Yes.</p> |

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1 Q. Paragraph 1, towards the bottom,
2 it says that Mr. Kins was the Responsible
3 Pharmacist at Rite Aid Pharmacy #4764 in
4 Broadview Heights, Ohio.
5 Do you see that?
6 MS. McENROE: Objection to scope.
7 THE WITNESS: I do.
8 BY MR. PIFKO:
9 Q. Do you know what the term
10 "responsible pharmacist" means?
11 MS. McENROE: Objection to scope.
12 THE WITNESS: I do.
13 BY MR. PIFKO:
14 Q. What does that mean?
15 A. It means that is the pharmacist
16 in charge, the head pharmacist for the store.
17 Q. Okay. And that's what I was
18 going to ask you, is -- so there's a hierarchy of
19 the pharmacists who work at any particular store?
20 MS. McENROE: Objection to form,
21 objection to scope.
22 THE WITNESS: In -- there is a
23 pharmacist that's in charge or the
24 pharmacist that's responsible for the

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1 recordkeeping. And then there could be a
2 staff pharmacist or a floater pharmacist
3 that may work in the store.
4 BY MR. PIFKO:
5 Q. And so you just alluded to some
6 of it, but the responsibilities of the pharmacist
7 in charge include recordkeeping and what else?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: Typically the
11 pharmacist in charge is of staffing and
12 maintenance of prescriptions and that.
13 BY MR. PIFKO:
14 Q. I believe in Sophia Lai's
15 deposition it was discussed that she had profit
16 and loss responsibility for the pharmacy
17 operations at her pharmacy at one point.
18 Does the pharmacist in charge
19 have that kind of responsibility as well?
20 MS. McENROE: Objection to form,
21 objection to scope.
22 THE WITNESS: Can you repeat the
23 question?
24 BY MR. PIFKO:

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1 Q. We talked about -- I forget the
2 term you used now -- the front of the store?
3 A. Front end?
4 Q. Front end and the pharmacy.
5 Right?
6 A. Right.
7 Q. So those operations -- there's
8 some degree of separation between those
9 operations at a store. Correct?
10 MS. McENROE: Objection to form,
11 objection to scope.
12 THE WITNESS: That is correct.
13 BY MR. PIFKO:
14 Q. Okay. And somebody at the
15 pharmacy is responsible for the profit and loss
16 operations of the pharmacy. Correct?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: That is correct.
20 BY MR. PIFKO:
21 Q. And is that the pharmacist in
22 charge?
23 MS. McENROE: Objection to scope.
24 THE WITNESS: That is correct.

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1 BY MR. PIFKO:
2 Q. So in this particular case, Mr.
3 Kins was in charge of the profit and loss of this
4 particular Rite Aid, 4764; is that correct?
5 MS. McENROE: Objection to form,
6 objection to scope.
7 THE WITNESS: That is correct.
8 BY MR. PIFKO:
9 Q. It says here under the second
10 paragraph of "Findings of Fact" that Mr. Kins "is
11 addicted to or abusing drugs."
12 Do you see that?
13 A. I do.
14 Q. Do you have any reason to dispute
15 that finding?
16 MS. McENROE: Objection to form,
17 objection to scope.
18 THE WITNESS: I do not.
19 BY MR. PIFKO:
20 Q. If you go to the next page, well,
21 starting at the bottom of the second page and
22 continuing to the third page, it says, "Brian
23 Marcus Kins has admitted to Board agents that he
24 is addicted to controlled substances; that Brian

| | |
|---|---|
| <p style="text-align: right;">Page 210</p> <p>1 Marcus Kins has stolen controlled substances from 2 his employer for personal abuse;" and "that Brian 3 Marcus Kins altered prescriptions to obtain 4 controlled substances for his abuse and to sell." 5 Do you see that? 6 A. I do. 7 Q. Do you have any reason to dispute 8 those findings of fact in here? 9 MS. McENROE: Objection to form, 10 objection to scope. 11 THE WITNESS: I do not. 12 BY MR. PIFKO: 13 Q. Did Rite Aid ever report any 14 suspicious orders from store Rite Aid 4764 while 15 Mr. Kins was the responsible pharmacist? 16 MS. McENROE: Objection to form. 17 THE WITNESS: We did not report 18 any suspicious orders. 19 BY MR. PIFKO: 20 Q. Does Rite Aid have a process of 21 disciplining an employee or terminating them when 22 they have a Board of Pharmacy action brought 23 against them? 24 MS. McENROE: Objection to form,</p> | <p style="text-align: right;">Page 212</p> <p>1 steal the prescriptions but fills them for 2 illegitimate medical purposes, does Rite Aid make 3 any evaluation of that? 4 MS. McENROE: Objection to form, 5 objection to scope. 6 THE WITNESS: Can you repeat 7 that? 8 BY MR. PIFKO: 9 Q. Yeah. 10 You've said that Rite Aid would 11 conduct an accountability of all drugs that 12 entered into the pharmacy or dispensed to 13 determine if there was a loss of controlled 14 substances. 15 And you define loss as theft. 16 Correct? 17 A. That is correct. 18 Q. So my question is, if you have a 19 problem pharmacist who isn't necessarily stealing 20 the pills but is knowingly filling them for 21 illegitimate purposes, would Rite Aid conduct any 22 sort of investigation into that type of conduct? 23 MS. McENROE: Objection to form, 24 objection to scope.</p> |
| <p style="text-align: right;">Page 211</p> <p>1 objection to scope. 2 THE WITNESS: Any time an 3 employee diverts controlled substances, 4 they would be terminated and Rite Aid 5 would turn that individual into the state 6 Board of Pharmacy. 7 BY MR. PIFKO: 8 Q. Other than terminating them, is 9 there any other investigation with respect to the 10 order history at that store that would occur in 11 connection with a finding that a pharmacist in 12 charge or any other pharmacist diverted 13 controlled substances? 14 MS. McENROE: Objection to form, 15 objection to scope. 16 THE WITNESS: Rite Aid would 17 conduct an accountability of all of the 18 drugs that entered into the pharmacy 19 in -- or dispensed to determine if there 20 was a loss of controlled substances. 21 BY MR. PIFKO: 22 Q. By loss, you mean theft? 23 A. Theft. 24 Q. What if a pharmacist doesn't</p> | <p style="text-align: right;">Page 213</p> <p>1 THE WITNESS: That would be part 2 of the asset protection's investigation 3 into the theft. 4 BY MR. PIFKO: 5 Q. And what would be the outcome if 6 they found that there was theft? 7 MS. McENROE: Objection to form, 8 objection to scope. 9 THE WITNESS: If there was theft 10 and the loss of drugs, the loss would be 11 reported to the Ohio Board of Pharmacy 12 and to the Drug Enforcement 13 Administration. 14 BY MR. PIFKO: 15 Q. But Rite Aid wouldn't make any 16 reports concerning suspicious orders. Correct? 17 MS. McENROE: Objection to form, 18 objection to scope. 19 THE WITNESS: We would not make a 20 report of a suspicious order. 21 BY MR. PIFKO: 22 Q. Would Rite Aid make any 23 adjustments to its auto replenishment system if 24 it knew that, for example, in this case, that the</p> |

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1 pharmacist was stealing prescriptions for
2 personal use or selling them to others?
3 MS. McENROE: Objection to form.
4 THE WITNESS: We would not adjust
5 the auto replenishment.
6 BY MR. PIFKO:
7 Q. So when it's conducting its
8 analysis of [REDACTED] and the like, it's
9 including that conduct as well, potentially.
10 Correct?
11 MS. McENROE: Objection to form.
12 THE WITNESS: It would be
13 including the prescriptions that were
14 fraudulently dispensed, because they
15 would be through the system. So yes.
16 BY MR. PIFKO:
17 Q. I'm handing you what's been
18 marked as Hart-30(b)(6) Exhibit 11.
19 - - -
20 (Deposition Exhibit No.
21 Hart-30(b)(6)-11, Order of the State
22 Board of Pharmacy Docket Number
23 D-100621-134, was marked for
24 identification.)

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1 - - -
2 BY MR. PIFKO:
3 Q. It's another order of the state
4 Board of Pharmacy. This one's five pages.
5 Direct your attention to the one
6 that begins on the bottom of the first page
7 concerning Henry Kozik, docket number
8 D-100621-134.
9 Take a moment to review that and
10 let me know when you're done.
11 MS. McENROE: For the record, I'm
12 going to object to the use of this
13 document as being outside the scope of
14 the 30(b)(6) for this deposition.
15 THE WITNESS: I have a question.
16 Here it makes note under the
17 State's Exhibit Number 3, "Rite Aid
18 Corporation Letter of Explanation."
19 Is that available to review?
20 BY MR. PIFKO:
21 Q. I don't have a copy of that with
22 me. Maybe Kevin Mitchell can get it for us.
23 Are you ready?
24 A. I am ready.

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1 Q. Have you seen this before?
2 A. I have not.
3 Q. Do you know who Henry Kozik is?
4 A. A pharmacist, yes.
5 Q. Someone who was employed by Rite
6 Aid?
7 MS. McENROE: Objection to scope.
8 THE WITNESS: Based on the order,
9 yes.
10 BY MR. PIFKO:
11 Q. The order has a number of
12 findings of fact concerning thefts committed by
13 Mr. Kozik on various dates, specifically
14 identifying various thefts of product that he
15 made.
16 Do you see that?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: I do.
20 BY MR. PIFKO:
21 Q. Paragraph 5 also says -- it's on
22 the third page.
23 Are you there?
24 A. I'm fine.

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1 Q. It says, "Henry F. Kozik did, on
2 or about June 2, 2007, knowingly sell a
3 controlled substance when the conduct was not in
4 accordance with Chapters 3719., 4729., and 4731.
5 of the Ohio Revised Code, to wit: Henry F. Kozik
6 gave a female at least 33 hydrocodone/APAP 5/500
7 tablets and at least 43 tablets of
8 hydrocodone/APAP 7.5/750 without a valid
9 prescription from a prescriber and not for a
10 legitimate medical purpose."
11 Do you see that?
12 MS. McENROE: Objection to scope.
13 THE WITNESS: I do.
14 BY MR. PIFKO:
15 Q. To your knowledge, did Rite Aid
16 report any suspicious orders from the pharmacies
17 where Mr. Kozik worked --
18 MS. McENROE: Objection to form.
19 BY MR. PIFKO:
20 Q. -- as a result of these
21 incidents?
22 MS. McENROE: Objection to form.
23 THE WITNESS: We did not.
24 BY MR. PIFKO:

| | |
|--|--|
| <p style="text-align: right;">Page 218</p> <p>1 Q. Do you know if Rite Aid conducted 2 an investigation into this conduct? 3 MS. McENROE: Objection to scope, 4 objection to form. 5 THE WITNESS: An investigation 6 would have been completed by our asset 7 protection team. 8 BY MR. PIFKO: 9 Q. What's the basis for you 10 believing that such an investigation would have 11 occurred? 12 MS. McENROE: Objection to scope. 13 THE WITNESS: Any theft of 14 controlled substances results in an asset 15 protection investigation. 16 BY MR. PIFKO: 17 Q. And if Mr. Kozik was disciplined 18 by the Board of Pharmacy, Rite Aid would know 19 about that? 20 MS. McENROE: Objection to form, 21 objection to scope. 22 THE WITNESS: Yes, we would know. 23 We have a system that we use to verify 24 our associates and their licenses to make</p> | <p style="text-align: right;">Page 220</p> <p>1 THE WITNESS: They did not. 2 BY MR. PIFKO: 3 Q. Did Rite Aid have any policy 4 whereby if a pharmacist conducted such an 5 investigation, they needed to report that back up 6 to the distribution center? 7 MS. McENROE: Objection to form. 8 THE WITNESS: The pharmacist, if 9 they did an investigation, would report 10 that to their pharmacy district manager 11 or their asset protection district 12 manager, not to the distribution center. 13 BY MR. PIFKO: 14 Q. Would anybody in that chain 15 ultimately provide information that there was a 16 potential red flag to the distribution center? 17 MS. McENROE: Objection to form. 18 THE WITNESS: Typically, no. 19 BY MR. PIFKO: 20 Q. I'm handing you a document that 21 was previously marked in Mr. Belli's deposition 22 as Exhibit 15. And I have marked it as 23 Exhibit 12 to Rite Aid's 30(b)(6) deposition. 24 - - -</p> |
| <p style="text-align: right;">Page 219</p> <p>1 sure that they remain valid. 2 BY MR. PIFKO: 3 Q. As we discussed with respect to 4 the prior Board of Pharmacy order, with respect 5 to paragraph 5 here, there would not have been 6 any adjustments to Rite Aid's auto replenishment 7 system as a result of this sale to a female of 8 certain hydrocodone tablets without a valid 9 prescription. 10 Do you agree? 11 MS. McENROE: Objection to form, 12 objection to scope. 13 THE WITNESS: There would be no 14 revision. 15 BY MR. PIFKO: 16 Q. If a pharmacist conducts any due 17 diligence of any suspected red flags, does -- at 18 the time when Rite Aid was self-distributing 19 Schedule III controlled substances, did the 20 distribution center who would sell to that 21 pharmacy have any visibility into the 22 investigation being conducted by the pharmacist? 23 MS. McENROE: Objection. 24 Objection to form.</p> | <p style="text-align: right;">Page 221</p> <p>1 (Deposition Exhibit No. 2 Hart-30(b)(6)-12, Project Initiation for 3 504 Suspicious Order Monitoring, Bates 4 stamped Rite_Aid_OMDL_0040184 through 5 Rite_Aid_OMDL_0040198, was marked for 6 identification.) 7 - - - 8 BY MR. PIFKO: 9 Q. It's a project initiation form 10 dated October 2, 2013. 11 Take a moment to review that and 12 let me know when you're done. 13 And it's Bates labeled 14 Rite_Aid_OMDL_0040184 through 40198. 15 THE WITNESS: (Reviewing 16 document.) 17 MS. McENROE: The witness looks 18 done. 19 BY MR. PIFKO: 20 Q. Are you ready? 21 A. Sure. 22 Q. We're trying to be efficient for 23 later. 24 Have you seen this document</p> |

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1 before?
2 A. I have.
3 Q. When was the last time you saw
4 it?
5 A. Within the past few days.
6 Q. This is something that you
7 reviewed in preparing for your 30(b)(6)
8 deposition?
9 A. I did.
10 Q. When was the first time you saw
11 this?
12 A. Back when it was prepared, when
13 it was first initiated.
14 Q. So this particular update is
15 dated October 2, 2013.
16 Do you see that?
17 A. I see that.
18 Q. So you would have seen it on or
19 around that time?
20 A. I would have, yes.
21 Q. It's got a business
22 representative signature name there, and it's got
23 your name on it.
24 Do you see that?

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1 A. I do.
2 Q. Can you tell me what this project
3 initiation is? It says on the first page,
4 "Project Initiation for 5046 Suspicious Order
5 Monitoring."
6 MS. McENROE: Objection to form.
7 THE WITNESS: Sure. This was a
8 project that we put together to take all
9 of the manual processes of our suspicious
10 order monitoring program and tie them
11 together into one portal application that
12 could house all of the information so
13 that there would be somewhere where the
14 distribution centers could easily
15 retrieve it, corporate could easily
16 retrieve the information from the current
17 suspicious order monitoring program.
18 BY MR. PIFKO:
19 Q. You had testified earlier that
20 you read Mr. Belli's deposition. Correct?
21 A. I did.
22 Q. He was questioned about this
23 document. It was admitted as Exhibit 15 in his
24 deposition.

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1 Do you see that?
2 A. I do.
3 Q. Do you recall reading the
4 discussion about this project initiation project
5 when you read his deposition?
6 A. I don't recall.
7 - - -
8 (Deposition Exhibit No.
9 Hart-30(b)(6)-13, Email chain, top one
10 dated 2013-08-07, Bates stamped
11 Rite_Aid_OMDL_0024599 and
12 Rite_Aid_OMDL_0024600, was marked for
13 identification.)
14 - - -
15 BY MR. PIFKO:
16 Q. I'm handing you another exhibit
17 concerning this project. You can keep that one
18 with you as well.
19 It's marked as Exhibit
20 Hart-30(b)(6)-13.
21 For the record, Exhibit 13 is
22 Bates labeled Rite_Aid_OMDL_0024599, and it has
23 an attachment which is a spreadsheet, which is
24 Bates labeled Rite_Aid_OMDL_0024600.

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1 Let me know when you're done
2 reading Exhibit 13.
3 A. I'm done reading number 13.
4 Q. Have you seen Exhibit 13 before?
5 A. I have.
6 Q. When was the last time you saw
7 that?
8 A. Within the past few days.
9 Q. This is a document that you
10 reviewed in preparing for your 30(b)(6)
11 deposition?
12 A. It is.
13 Q. When do you believe was the first
14 time you saw this document?
15 A. Back around July of 2013.
16 Q. Karyn Kunzig writes to Rick
17 Chapman and you on Exhibit 13.
18 Do you see that?
19 A. I do.
20 Q. Who is Karyn?
21 A. Karyn is in our IT department.
22 Q. Who is Rick Chapman?
23 A. Rick Chapman was our VP of
24 logistics at the time.

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1 Q. Do you know why Karyn is writing
2 to you and Rick at this time?
3 A. So that we can move the project
4 along.
5 Q. Did you have a discussion about
6 this project before Karyn sent you this email?
7 A. We did.
8 Q. When do you believe was the first
9 time you discussed this project?
10 A. Late 2012, early 2013, initial
11 discussions.
12 Q. How did it first come about?
13 A. I believe part of it was based on
14 a review of the suspicious order monitoring. And
15 we were looking to start to streamline the
16 process and started having discussions about it,
17 to the best of my knowledge.
18 Q. Who was reviewing the suspicious
19 order monitoring?
20 A. Sophia --
21 MS. McENROE: Objection to form.
22 THE WITNESS: Sophia, Chris Belli
23 and myself.
24 BY MR. PIFKO:

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1 Q. Why were you reviewing the
2 suspicious order monitoring?
3 A. The suspicious monitoring had
4 various pieces in various -- as we've discussed,
5 various pieces with various departments. And we
6 were looking to streamline it to make sure that
7 everything was in one place.
8 Q. What led you to have a discussion
9 about streamlining it?
10 A. Part of the discussion was just
11 how manual the process was and all the different
12 aspects were all manual and we wanted to
13 streamline it.
14 Q. But what I'm trying to get at is,
15 why have the discussion at that time?
16 MS. McENROE: Objection to form.
17 THE WITNESS: I don't remember.
18 BY MR. PIFKO:
19 Q. Was there some sort of event or
20 incident that led you to want to modify the
21 program?
22 MS. McENROE: Objection to form.
23 THE WITNESS: Not that I
24 remember.

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1 BY MR. PIFKO:
2 Q. Do you remember who initiated the
3 discussion?
4 A. I believe it was Chris Belli.
5 Q. So do you remember anyone else
6 who was part of the discussion?
7 A. Sophia, Chris and myself. IT
8 would have to be part of the discussion, Karyn or
9 someone from her team. Those are the individuals
10 that I would believe would be involved.
11 Q. Do you know if there was any
12 other documentation prior to this August 7, 2013
13 email?
14 MS. McENROE: Objection to form.
15 BY MR. PIFKO:
16 Q. Concerning this project?
17 A. I'm sure there had to be other
18 documentation or emails setting up for it, but I
19 don't know where they would be.
20 Q. When Karyn writes to you and
21 Rick, she says she wants to present this to Frank
22 at the August 21st meeting.
23 Do you see that?
24 A. I do.

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1 Q. Who's Frank?
2 A. Frank was our chief financial
3 officer.
4 Q. And do you have an understanding
5 about why you would need to present to him?
6 A. I do. Any capital expense needed
7 to be approved by the chief financial officer.
8 Q. Have you gone before Frank on
9 other occasions to request approval for capital
10 expenditures?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: I have not.
14 BY MR. PIFKO:
15 Q. Okay. But you're familiar with
16 the process of getting approval for a capital
17 expenditure?
18 MS. McENROE: Objection to form.
19 THE WITNESS: I am.
20 BY MR. PIFKO:
21 Q. And so it says, present this to
22 him at the August 21st meeting.
23 To your knowledge, is there some
24 regularity with which Frank holds capital

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1 expenditure approval meetings?
2 A. I believe so.
3 Q. What's the regularity of which
4 these meetings are held?
5 A. I do not know.
6 Q. Do you know if they're held
7 monthly?
8 MS. McENROE: Objection to form.
9 THE WITNESS: I do not know.
10 BY MR. PIFKO:
11 Q. According to this email, there
12 was going to be a meeting on August 21st.
13 And you were preparing to be able
14 to present at that meeting?
15 A. That is correct.
16 Q. Karyn says, "This is a new form
17 used to request the use of" resources --
18 "resource to gather requirements and perform
19 enough analysis to determine a realistic cost of
20 the project. It's sort of a pre-PI."
21 Do you see that?
22 A. I do.
23 Q. So the PI is this project
24 initiation form that is marked as Exhibit 12 that

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1 I just handed you a moment earlier. Correct?
2 A. Correct.
3 Q. And she's talking about this form
4 that's attached to the email. Correct?
5 MS. McENROE: You mean in
6 Exhibit 13?
7 MR. PIFKO: Yeah, sorry. The
8 heading on it is "Proposed Project
9 Request."
10 THE WITNESS: Yes.
11 BY MR. PIFKO:
12 Q. Did you provide Karyn with the
13 information that she put in this proposed project
14 request?
15 MS. McENROE: Objection to form.
16 THE WITNESS: I would have
17 provided input.
18 BY MR. PIFKO:
19 Q. When you say "input," what do you
20 mean?
21 A. The description would have been
22 drafted. I'm not sure if I did the drafting, but
23 I most certainly would have had some input into
24 it.

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1 Q. Who would have done the drafting
2 if it wasn't you?
3 A. It may have been done by Chris
4 Belli or Sophia.
5 Q. Okay. So any one of them, it
6 would have been done by Sophia, Chris or you?
7 MS. McENROE: Objection to form.
8 THE WITNESS: To the best of my
9 knowledge, yes.
10 BY MR. PIFKO:
11 Q. Okay. So it has a detailed
12 research description.
13 Do you see that section?
14 A. I do.
15 Q. And it says, "Develop effective
16 controls against the diversion of controlled
17 substances and conduct adequate due diligence to
18 ensure that controlled substances distributed
19 from the Distribution Centers are for legitimate"
20 medical "needs."
21 Did I read that correctly?
22 MS. McENROE: Objection to form.
23 It's "legitimate patient needs," not
24 "legitimate medical needs."

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1 BY MR. PIFKO:
2 Q. Did I read that correctly, with
3 the addition of "patient"?
4 A. I do see that.
5 Q. Let me just start over to make a
6 clear record.
7 It says, under "Detailed Research
8 Description," "Develop effective controls against
9 the diversion of controlled substances and
10 conduct adequate due diligence to ensure that
11 controlled substances" are "distributed from the
12 Distribution Centers are for legitimate patient
13 needs."
14 Did I read that correctly?
15 A. You did.
16 Q. Then it says, "Create a portal
17 application that will use the Rx Replenishment
18 and Billing system information to create a
19 reporting platform for suspicious order
20 monitoring."
21 Did I read that correctly?
22 A. You did.
23 Q. It also says, "Today blanket
24 thresholds are manually enforced at 5,000 dosage

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1 units per individual ndc per week per store,
2 regardless of dispensing volume or trends."
3 Did I read that correctly?
4 A. You did.
5 Q. And then it says, "A process to
6 systematically control based on store volume must
7 be developed."
8 Did I read that correctly?
9 A. You did.
10 Q. "Allow for distribution center to
11 add comments/approvals on shipments to stores.
12 This information needs to be available to show
13 DEA if requested."
14 Did I read that correctly?
15 A. You did.
16 Q. Okay. Is that an accurate
17 description of this project?
18 MS. McENROE: Objection to form.
19 THE WITNESS: The project itself,
20 as it alludes to, was to bring the entire
21 suspicious order monitoring program into
22 the portal so that we could get at the
23 program and have easy access to it. You
24 will make note that it references what we

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1 have been speaking about as far as
2 replenishment and billing in our current
3 system. And this would enhance the
4 system.
5 BY MR. PIFKO:
6 Q. It says that -- where it says,
7 "Today blanket thresholds are manually enforced
8 at 5,000 dosage units per individual ndc per week
9 per store regardless of dispensing volume or
10 trends."
11 Do you see that?
12 A. Yes.
13 Q. Is that an accurate statement
14 about the system as of when this was written, in
15 August 7, 2013?
16 MS. McENROE: Objection to form.
17 THE WITNESS: Yes. Blanket
18 controls were in place of 5,000 dosage
19 units per store.
20 BY MR. PIFKO:
21 Q. Regardless of dispensing volume
22 or trends. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: Correct.

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1 BY MR. PIFKO:
2 Q. And then it says, "A process to
3 systematically control based on store volume must
4 be developed."
5 Do you see that?
6 A. I do.
7 Q. There was no process for
8 systematically controlling based on store volume
9 at that time. Correct?
10 MS. McENROE: Objection to form.
11 THE WITNESS: That is not true.
12 That ties back to the replenishment
13 system and the algorithms that were used
14 with the replenishment system with a
15 maximum billing capacity or ship on
16 billing capacity.
17 BY MR. PIFKO:
18 Q. Did you ever write to anyone and
19 say that this statement about a process to
20 systematically control based on store volume
21 needed to be developed was inaccurate?
22 MS. McENROE: Objection to form.
23 THE WITNESS: I did not.
24 BY MR. PIFKO:

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1 Q. Do you recall ever telling anyone
2 that that was inaccurate?
3 MS. McENROE: Objection to form.
4 THE WITNESS: I don't recall.
5 BY MR. PIFKO:
6 Q. Halfway down the page, it says,
7 "Additional Information on this Request."
8 Do you see that section?
9 A. I do.
10 Q. And then it's got enumerated
11 items there.
12 Do you see that?
13 A. I do.
14 Q. Item number 2, "How does this
15 request support the RiteAid's Corporate Strategic
16 Plan?"
17 Do you see that?
18 A. I do.
19 Q. And it says, "Reduce risk of
20 fines and automate manual distribution center
21 processes."
22 Do you see that?
23 A. I do.
24 Q. Is that accurate?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: It is. It
3 identifies what I have previously said as
4 far as automate the manual DC processes.
5 BY MR. PIFKO:
6 Q. What about reducing the risk of
7 fines.
8 Do you see that?
9 A. It could reduce the risk of fines
10 as well.
11 Q. How would this reduce the risk of
12 fines?
13 A. Having -- we would have all of
14 the documentation in one particular place to be
15 able to provide to the DEA when they came in for
16 an inspection.
17 Q. At this time, there was no --
18 there was a risk of fines because there wasn't
19 adequate documentation for the DEA if they came
20 for an inspection.
21 Is that true?
22 MS. McENROE: Objection to form.
23 THE WITNESS: That is not true.
24 There was adequate documentation at the

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1 DCs, but again, it was in a paper format.
2 And so we were trying to streamline the
3 process and eliminate anything of the
4 manual such.
5 BY MR. PIFKO:
6 Q. Do you agree that there were some
7 risk of fines that you were trying to reduce?
8 Why make this statement here?
9 MS. McENROE: Objection to form.
10 THE WITNESS: There's always risk
11 of fines.
12 BY MR. PIFKO:
13 Q. Why do you say that?
14 A. Because there's always risk that
15 there's going to be an error that's going to be
16 made that could result in a fine.
17 Q. If you're compliant with the law,
18 you wouldn't get a fine.
19 You agree with that?
20 MS. McENROE: Objection to form.
21 THE WITNESS: That is correct.
22 BY MR. PIFKO:
23 Q. Turning back to the email, it
24 says, "Please review and let me know if you have

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1 any questions."
2 Do you see that?
3 A. I do.
4 Q. Did you ever tell anyone that you
5 had questions about this form?
6 A. I don't remember.
7 Q. It says, "Also, do you have
8 additional benefits that can be added, particular
9 a dollar figure associated with the potential
10 fines or what you've seen as recent fines with
11 other chains."
12 Do you see that?
13 A. I do.
14 Q. Did you ever provide that type of
15 information?
16 A. I believe I did.
17 Q. Where did you get that
18 information?
19 A. Any information that I had would
20 have been my knowledge.
21 Q. It says, "Have actual numbers
22 really makes a difference and will make it easier
23 when you are answering Frank's questions during
24 the meeting."

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1 Do you see that?
2 A. I do.
3 Q. Do you have an understanding
4 about why she said that?
5 MS. McENROE: Objection to form.
6 THE WITNESS: Having actual
7 numbers or having some -- putting some
8 substance between a request and providing
9 it to Frank for consideration raises the
10 level that the project would be approved
11 and could move forward.
12 BY MR. PIFKO:
13 Q. So let's go back to Exhibit 12.
14 If you turn in to page using --
15 you can use the page 9 at the bottom or you can
16 use the Bates number, which is 0040192.
17 Let me know when you're there.
18 A. I'm there.
19 Q. Okay. In response to the
20 question about, did you have additional benefits
21 that could be added, a particular dollar figure
22 associated with the potential fines that you have
23 seen in other chains that we just talked about in
24 Exhibit 13, it's got some numbers here.

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1 Do you see that?

2 A. I do.

3 Q. Are those the numbers that you

4 obtained in response to that question?

5 A. I believe so, yes.

6 Q. How did you come to obtain those

7 numbers?

8 A. They were industry announcements

9 from industry publications and articles.

10 Q. Those were settlements and fines

11 that you were aware of?

12 A. Yes.

13 Q. It says here, "Recent DEA fines

14 for controlled substances distributors have been

15 tied to shipping suspicious orders to registrants

16 (pharmacies)."

17 Do you see that?

18 A. I do.

19 Q. Do you know who wrote that

20 language?

21 A. I believe I did.

22 Q. What did you mean by that?

23 A. I meant that there was a

24 heightened awareness that -- from a distribution

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1 standpoint, that wholesalers were getting fines

2 for suspicious orders.

3 Q. So then there's three different

4 companies and fines that you list there.

5 Do you see that?

6 A. I do.

7 Q. Walgreens, \$80 million; is that

8 correct?

9 A. Yes.

10 Q. Do you know what that concerned?

11 A. I believe suspicious orders.

12 Q. Cardinal Health, \$34 million.

13 Do you know what that concerned?

14 A. I believe suspicious orders.

15 Q. Do you know when the Walgreens

16 fine was issued?

17 A. I do not.

18 Q. Do you know when the Cardinal

19 Health fine was issued?

20 A. I do not.

21 Q. McKesson, \$13 million.

22 Do you see that?

23 A. I do.

24 Q. Do you have an understanding

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1 about what that was about?

2 A. My understanding was it was about

3 suspicious orders.

4 Q. Do you know when that fine was

5 issued?

6 A. I do not.

7 Q. Turn to the next page, page 10.

8 Well, starting at the bottom of

9 page 9 and continuing through page 10, it talks

10 about a West Virginia case that had been filed

11 which included allegations against three Rite Aid

12 pharmacy locations.

13 Do you see that?

14 A. I do.

15 Q. And then it says, "Included in

16 the suit was language" -- if you go to page 10.

17 "Included in the suit was

18 language concerning suspicious orders to the

19 three Rite Aid pharmacies, how identified, how

20 resolved and end outcome."

21 Do you see that?

22 A. I do.

23 Q. Did you write that language?

24 A. I believe I did.

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1 Q. What did you mean by that?

2 A. I believe I was trying to put

3 forth the impact of the distribution of

4 controlled substances to make it aware as part of

5 the project.

6 Q. The next paragraph here, it says,

7 on page 10, "DEA has stated numerous times

8 controlled substance distributors must have a

9 protocol to identify and report suspicious orders

10 based on individual pharmacy volume not generic

11 limits for all registrants."

12 Do you see that?

13 A. I do.

14 Q. Did you write that?

15 A. I did.

16 Q. How did you come to that

17 knowledge?

18 MS. McENROE: Objection to form.

19 THE WITNESS: Through my

20 knowledge base and my interaction with

21 various entities, trade groups, reading

22 articles from the DEA.

23 BY MR. PIFKO:

24 Q. Why put that in this document?

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1 A. At this particular time when we
2 were tying all of the documents together, this
3 would be part of our algorithms, and I wanted to
4 make sure that that was included in as part of
5 our process.

6 Q. What do you mean by that, this
7 would have been part of our algorithms? I don't
8 know what you mean by that part.

9 A. What I'm trying to say is, I
10 wanted to make sure that we weren't just
11 accounting for the 5,000 dosage units, that we
12 were tying in the rest of our suspicious order
13 monitoring program related to replenishment.

14 MS. McENROE: Mark, we've been
15 going about an hour. Whenever you're
16 ready for a break would be great.

17 BY MR. PIFKO:

18 Q. How does this paragraph pertain
19 to the algorithms?

20 A. The algorithms are not the
21 generic limits for all registrations. The
22 algorithms for us identify individual pharmacy
23 volume, not generic limits for registrations. So
24 that's what I wanted to put in there.

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1 Q. Going back to page 9, it's got a
2 cost estimate.

3 Do you see that?

4 A. I do.

5 Q. \$435,000 -- \$435,600.

6 Do you see that?

7 A. I do.

8 Q. Is that a large amount in the
9 context of Rite Aid's costs?

10 MS. McENROE: Objection to form.

11 THE WITNESS: If you look at this
12 form, it would be an extra large cost.

13 MS. McENROE: For the record, the
14 witness was looking at the attachment to
15 Exhibit 13.

16 BY MR. PIFKO:

17 Q. That's in the section "Size
18 Guesstimates" of the Proposed Project Request
19 on Exhibit 13. Correct?

20 A. Yes.

21 MR. PIFKO: We can take a break.

22 MS. McENROE: Thank you.

23 THE VIDEOGRAPHER: Going off the
24 record at 3:23 p.m.

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1 - - -

2 (A recess was taken from
3 3:23 p.m. to 3:46 p.m.)

4 - - -

5 THE VIDEOGRAPHER: Back on the
6 record. The time is 3:46 p.m.

7 BY MR. PIFKO:

8 Q. Let's go back to Exhibit 12.

9 Do you have it in front of you?

10 A. I've got it. Thank you.

11 Q. Go to page 3.

12 It says, "Background/Summary of
13 the Project."

14 Do you see that?

15 A. I do.

16 Q. It says, "The purpose of this
17 project is to develop effective controls against
18 the diversion of controlled substances and
19 conduct adequate due diligence to ensure that
20 controlled substances distributed from the
21 Distribution Centers are for legitimate patient
22 needs. Rite Aid must ensure compliance with 21
23 U.S.C. Section 823 and/or C.F.R. 1307.74(b) to
24 detect and report suspicious orders of controlled

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1 substances through the Distribution Centers."

2 Do you see that?

3 A. I do.

4 Q. Did I read that correctly?

5 A. You did.

6 Q. Is that an accurate description
7 of the background/summary of the project?

8 MS. McENROE: Objection to form.

9 THE WITNESS: It is.

10 BY MR. PIFKO:

11 Q. Go to page 5.

12 So on page 5 and 6, page 5 has
13 some parameters that it says -- well, I'm jumping
14 ahead myself.

15 Let's start over here.

16 A. Okay.

17 Q. Top of page 5.

18 "Suspicious Order Review. Today
19 blanket thresholds are manually enforced at 5,000
20 dosage units per individual NDC per week per
21 store regardless of dispensing volumes and
22 trends."

23 We read that in Exhibit 13 as
24 well. Correct?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: Yes.
3 BY MR. PIFKO:
4 Q. Did I read that correctly?
5 A. You did.
6 Q. It says, "This is a labor
7 intensive process with opportunity for order
8 lines to be missed."
9 Do you see that?
10 A. I do.
11 Q. Did I read that correctly?
12 A. You did.
13 Q. Did you write this portion of the
14 document?
15 A. I don't remember.
16 Q. What does it mean when it says,
17 "This is a labor intensive process with
18 opportunity for order lines to be missed"?
19 A. I believe that means when the
20 picker is picking the order and the system comes
21 up for 51 bottles instead of 50 bottles, the
22 manual process of reducing it has the ability to
23 be missed.
24 Q. And that can happen sometimes?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: Very rarely, but
3 they're human beings, so it's possible.
4 BY MR. PIFKO:
5 Q. It says, "In addition, stores
6 which truly need this quantity must order it from
7 McKesson."
8 Do you see that?
9 A. I do.
10 Q. What does that mean?
11 A. It means that if there is an
12 order that is cut back and the store did not
13 receive the order from the distribution center,
14 they can pick up the additional quantity from
15 McKesson up to McKesson's threshold if need be.
16 Q. Did anyone ever tell Rite Aid
17 that it was compliant for it to cut orders to
18 threshold?
19 MS. McENROE: Objection to form.
20 THE WITNESS: Can you repeat the
21 question?
22 BY MR. PIFKO:
23 Q. So you understand, as we were
24 just discussing, when an order comes in and

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1 exceeds threshold, Rite Aid cuts the order down
2 to the thresholds and then ships it. Correct?
3 MS. McENROE: Objection to form.
4 THE WITNESS: Correct.
5 BY MR. PIFKO:
6 Q. Did anyone ever advise Rite Aid
7 that that was a procedure that was compliant with
8 the Controlled Substances Act?
9 MS. McENROE: Objection.
10 THE WITNESS: Well, I would state
11 that the three DEA audits of the
12 distribution center from the DEA and
13 looking at the suspicious order
14 monitoring program in the process that
15 the 5,000 dosage units was the max was
16 reviewed by DEA agents at those three
17 inspections in 2005, 2009 and 2012.
18 BY MR. PIFKO:
19 Q. Do you know if they were provided
20 documentation that explained that Rite Aid cut
21 its orders down to threshold?
22 MS. McENROE: Objection to form.
23 THE WITNESS: They were provided
24 documentation in that they reviewed all

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1 the logs in the distribution center that
2 documented the threshold cutbacks.
3 BY MR. PIFKO:
4 Q. How do you know that they review
5 those logs?
6 A. Through the write-up from the
7 distribution center managers and individuals that
8 were at the distribution center.
9 Q. We spoke yesterday, you know Don
10 Tush from having been involved in this industry
11 for many decades?
12 MS. McENROE: Objection to form.
13 THE WITNESS: I do know Don, yes.
14 BY MR. PIFKO:
15 Q. Did you ever talk to him about
16 Rite Aid's procedure of cutting orders to
17 threshold?
18 MS. McENROE: Objection to form.
19 THE WITNESS: Not that I
20 remember, no.
21 BY MR. PIFKO:
22 Q. Did you ever talk to any other
23 DEA agents who inspected Rite Aid about that
24 procedure?

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1 MS. McENROE: Objection to form.
 2 THE WITNESS: Not that I
 3 remember, no.
 4 BY MR. PIFKO:
 5 Q. Has any DEA agent ever provided
 6 anything in writing to Rite Aid saying that that
 7 procedure is acceptable under the Controlled
 8 Substances Act?
 9 MS. McENROE: Objection to form
 10 and objection to scope.
 11 THE WITNESS: Not that I'm aware
 12 of.
 13 BY MR. PIFKO:
 14 Q. So the only basis of your
 15 knowledge that you believe that DEA said it was
 16 okay was from Rite Aid's internal write-ups of
 17 those inspections; is that correct?
 18 MS. McENROE: Objection to form.
 19 THE WITNESS: That and the fact
 20 that the DEA has never said it was not
 21 effective.
 22 BY MR. PIFKO:
 23 Q. I want to hand you -- or refer
 24 you back to an exhibit that was introduced

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1 yesterday as Exhibit 15.
 2 MS. McENROE: Why don't we make a
 3 pile of today's separate a little bit, so
 4 that we -- is that okay, Mark? I just
 5 don't want to --
 6 MR. PIFKO: Well, I'm still
 7 looking at those.
 8 MS. McENROE: Oh, you're still
 9 looking at these? Okay.
 10 MR. PIFKO: Yes.
 11 MS. McENROE: Okay. Then don't
 12 put those away.
 13 MR. PIFKO: I just -- I want to
 14 direct you to what was marked yesterday
 15 as Exhibit 15.
 16 MS. McENROE: 1-5?
 17 MR. PIFKO: Yeah.
 18 BY MR. PIFKO:
 19 Q. Have you got that in front of
 20 you?
 21 A. I do.
 22 Q. Okay. Do you recall this
 23 document?
 24 A. I do.

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1 Q. Let's turn to the second and
 2 third page. It's a letter from the Department of
 3 Justice dated December 27, 2007.
 4 Do you see that?
 5 A. I do.
 6 Q. Did Rite Aid ever receive this
 7 letter?
 8 A. I cannot confirm that Rite Aid
 9 ever received the letter.
 10 Q. There was a similar letter sent
 11 in 2006.
 12 Do you know if Rite Aid ever
 13 received that letter?
 14 A. I cannot confirm that Rite Aid
 15 received the letter.
 16 Q. How about a similar letter dated
 17 2012, did Rite Aid ever receive that letter?
 18 A. I cannot locate a 2012 letter
 19 that Rite Aid received it.
 20 Q. You see in the second paragraph
 21 on page 2 of the letter, it says, "The regulation
 22 clearly indicates that it is the sole
 23 responsibility of the registrant to design and
 24 operate such a system." And it's talking about a

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1 system to report suspicious orders.
 2 It says, "Accordingly, DEA does
 3 not approve or otherwise endorse any specific
 4 system for reporting suspicious orders."
 5 MS. McENROE: Are you on the
 6 second page of the letter, Mark?
 7 MR. PIFKO: The first page of the
 8 letter.
 9 MS. McENROE: Oh, the first page
 10 of the letter?
 11 Can you start from the beginning?
 12 I'm so sorry, I just couldn't find it.
 13 BY MR. PIFKO:
 14 Q. And then it says, "Past
 15 communications with DEA, whether implicit or
 16 explicit, that could be construed as approval of
 17 a particular system for reporting suspicious
 18 orders, should no longer be taken to mean that
 19 DEA approves a specific system."
 20 Do you see all that?
 21 A. I do.
 22 Q. Okay. Are you aware that that's
 23 DEA's position?
 24 MS. McENROE: Objection to form.

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1 THE WITNESS: I am aware that the
 2 DEA does not approve or otherwise endorse
 3 a specific system.
 4 BY MR. PIFKO:
 5 Q. The second page of the letter,
 6 which is the third page of Exhibit 15 from
 7 yesterday's deposition, which is Bates labeled
 8 Rite_Aid_OMDL_0046650, it says, "Registrants that
 9 rely on rigid formulas to define whether an order
 10 is suspicious may be failing to detect suspicious
 11 orders."
 12 Do you see that?
 13 A. I see that.
 14 Q. Do you understand that's DEA's
 15 position?
 16 MS. McENROE: Objection to form.
 17 THE WITNESS: I do.
 18 BY MR. PIFKO:
 19 Q. It says, "For example, a system
 20 that identifies orders as suspicious only if the
 21 total amount of a controlled substance order
 22 during one month exceeds the amount ordered the
 23 previous month by a certain percentage or more is
 24 insufficient."

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1 Do you see this? Do you see
 2 that?
 3 A. I do.
 4 Q. Do you understand that that's
 5 DEA's position?
 6 MS. McENROE: Objection to form.
 7 THE WITNESS: I do.
 8 BY MR. PIFKO:
 9 Q. Going back to the first page of
 10 the letter, which is Rite_Aid_OMDL_0046649, the
 11 last paragraph there says, "The regulation
 12 specifically states that suspicious orders
 13 include orders of an unusual size, orders
 14 deviating substantially from a normal pattern,
 15 and orders of an unusual frequency."
 16 Do you see that?
 17 A. I do.
 18 Q. "These criteria are disjunctive
 19 and not all inclusive."
 20 Do you see that?
 21 A. I do.
 22 Q. Do you understand that that's
 23 DEA's position?
 24 MS. McENROE: Objection to form.

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1 THE WITNESS: Yes.
 2 BY MR. PIFKO:
 3 Q. Then it says at the bottom of
 4 that same paragraph, "The size of an order alone,
 5 whether or not it deviates from a normal pattern,
 6 is enough to trigger the registrant's
 7 responsibility to report the order as
 8 suspicious."
 9 Do you see that?
 10 A. I see that.
 11 Q. Do you understand that that's the
 12 DEA's position?
 13 MS. McENROE: Objection to form.
 14 THE WITNESS: I do.
 15 BY MR. PIFKO:
 16 Q. Let's go back to Exhibit 12 from
 17 the 30(b)(6).
 18 MR. PIFKO: And keep that letter,
 19 we might still look at --
 20 MS. McENROE: Yeah. I was just
 21 going to do it like this, so we don't get
 22 them mixed up.
 23 BY MR. PIFKO:
 24 Q. So we're looking at this heading,

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1 "Suspicious Order Review" on page 5 of
 2 Exhibit 13 -- or, sorry, Exhibit 12 to the
 3 30(b)(6). It says, "A new Billing application
 4 will be developed which will," and then it's got
 5 all these bullet points.
 6 Do you see that?
 7 A. I do, yes.
 8 Q. And it refers to Appendix A and
 9 Appendix B for details.
 10 Do you see that?
 11 A. Yes.
 12 Q. Were any of these calculations
 13 referred to in Exhibit A and Exhibit B already
 14 being performed by Rite Aid?
 15 MS. McENROE: Objection to form.
 16 MR. PIFKO: For the record,
 17 Exhibit A can be found on page 12 of the
 18 document, Rite_Aid_OMDL_0040195 through
 19 0040197.
 20 THE WITNESS: Yes. Some of the
 21 items in Appendix A were being done at
 22 present.
 23 BY MR. PIFKO:
 24 Q. At the time of this document?

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1 A. At the time of this document.
2 Q. Okay. Let's go through them.
3 So starting with the beginning of
4 Appendix A.
5 The first row, do you see that?
6 A. I do.
7 Q. "Control Drug Max Movement,
8 Weekly Store."
9 A. Yes.
10 Q. So when it says "weekly store" or
11 "bi-weekly store," that is referring back to the
12 thing we discussed earlier, right, whether a
13 store gets a shipment once a week or once every
14 two weeks; is that correct?
15 MS. McENROE: Objection to form.
16 THE WITNESS: That is correct.
17 BY MR. PIFKO:
18 Q. When it says "bi-weekly," is
19 that -- we also talked about certain stores that
20 get two orders a week.
21 A. This would be every other week.
22 Q. Okay. That's what I thought. I
23 just wanted to confirm that. All right.
24 So this max movement calculation

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1 referred to in the first two rows, is that
2 something that was already being performed?
3 A. Yes.
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 BY MR. PIFKO:
11 Q. Was it possible for an order to
12 be placed which exceeded that calculation?
13 MS. McENROE: Objection to form.
14 THE WITNESS: An order could be
15 placed in excess of that [REDACTED]
16 [REDACTED]
17 BY MR. PIFKO:
18 Q. To be clear, no orders that
19 exceeded that calculation were ever reported as
20 suspicious. Correct?
21 MS. McENROE: Objection to form.
22 THE WITNESS: They were not.
23 BY MR. PIFKO:
24 Q. You pulled out the binder.

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1 A. I did.
2 Q. What are you --
3 A. I'm looking for the Rx
4 replenishment suggested order screens.
5 Q. Which tab are you at? Tell me
6 when you get there.
7 A. Tab 8.
8 Q. That's the document you have
9 identified here as DC ordering limitations?
10 A. Yes.
11 Q. 0046064?
12 A. Yes.
13 And tab 9.
14 Q. Which is pharmacy replenishment
15 algorithms 2007, 0045426; is that correct?
16 A. Yes.
17 Q. What specifically are you looking
18 for there?
19 A. A lot of the items that are here
20 would be in this particular document, such as the
21 first two. Or when we're going to go to the back
22 part of it, where we're talking number of
23 suggested orders, deliveries, that's all in here
24 as far as the sensitivity [REDACTED] and all of

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1 the information.
2 Q. Okay. So when -- okay.
3 So the max movement, where is
4 that referred to in the documents you're looking
5 through in your binder, if you can just read the
6 Bates number?
7 A. Sure. Let me find it.
8 I'm looking.
9 I can't find it in the documents.
10 Q. So you don't know for sure if
11 that was a calculation that's already being
12 performed?
13 MS. McENROE: Object to form.
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 BY MR. PIFKO:
18 Q. Okay. But you can't find it in
19 the documentation that you have?
20 A. I cannot.
21 Q. So you can't say with certainty
22 that that was being performed sitting here today.
23 Correct?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: I cannot.
2 BY MR. PIFKO:
3 Q. How about "Control Drug Slow
4 Mover Limit"? It's the third and fourth rows.
5 Was that a calculation that was
6 being performed already as of the date of this
7 document, October 2, 2013?
8 Let the record reflect you're
9 reviewing the same exhibits. Correct?
10 A. Correct.
11 Q. Not exhibits, the tabs in your
12 binder.
13 A. It appears that number 3 is on
14 Rite_Aid_OMDL_0045431, maximum quantity check.
15 Q. Okay. Let's look at the fifth
16 and sixth calculation, or calculation in rows
17 five and six, which is, "Control Drug Store
18 Unblock Limit."
19 Can you tell me if that was a
20 calculation that was already being performed as
21 of October 2, 2013?
22 And let the record reflect that
23 you're looking at the same tabs in your binder.
24 Correct?

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1 A. That is correct.
2 I cannot locate that.
3 Q. So sitting here today, you don't
4 know if those calculations were already being
5 performed as of October 2, 2013. Correct?
6 MS. McENROE: Objection to form.
7 THE WITNESS: I do not.
8 BY MR. PIFKO:
9 Q. How about moving to page 13, the
10 calculation called "Suspicious Order Percent."
11 Do you see that?
12 It's on the second and third
13 column -- or, sorry, second and third row on page
14 13.
15 Do you know if that was a
16 calculation that was being performed on or before
17 October 2, 2013?
18 A. Which one are you on? I got page
19 13, but what's --
20 Q. "Suspicious Order Percent."
21 A. "Weekly Store"?
22 Q. Yeah. Can you tell me if it's
23 being calculated for weekly store or bi-weekly
24 store?

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1 A. To the best of my knowledge, that
2 was not being done.
3 Q. How about "Suspicious Order
4 Quantity," which is the fourth row on page 13 and
5 the fifth row on page 13?
6 A. I do not know that that was being
7 done.
8 Q. How about "Percent Over Average,"
9 the sixth row on page 13?
10 A. I do not know if that was current
11 or not.
12 Q. How about "Percent Over Max
13 Month," the seventh row on page 13, was that
14 calculation being performed already as of October
15 2, 2013?
16 A. I do not know.
17 Q. And let's go to page 14.
18 The calculation in the first row
19 on page 14, "Number of Repeated Upward
20 Overrides," do you know if that calculation was
21 being performed on or before October 2, 2013?
■ ■ ■
■ ■ ■
■ ■ ■

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■ ■ ■
■ ■ ■
■ ■ ■
■ ■ ■ I'm not overly
5 familiar with all of the KPIs.
6 Q. To be clear, the asset protection
7 KPIs were never used to identify, report or stop
8 the shipment of a suspicious order. Correct?
9 MS. McENROE: Objection to form.
10 THE WITNESS: The asset
11 protection KPIs were utilized to review
12 orders and then lead to diversion cases
13 if there were some issues with it. But
14 they were not used to report suspicious
15 orders.
16 BY MR. PIFKO:
17 Q. Or to identify them. Correct?
18 MS. McENROE: Objection to form.
19 THE WITNESS: They could identify
20 a suspicious order or an order. But if
21 it was out of the norm, they would
22 identify it after it was shipped.
23 BY MR. PIFKO:
24 Q. And no data from the asset

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1 protection program was ever used to report a
2 suspicious order. Correct?
3 MS. McENROE: Objection to form.
4 THE WITNESS: No.
5 BY MR. PIFKO:
6 Q. Your testimony that you just
7 gave, was that for the entirety of the
8 calculations on page 14?
9 A. Yes.
10 Q. Going back to page 6,
11 Rite_Aid_OMDL_0040189.
12 Are you there?
13 A. I am.
14 Q. Okay. The first bullet point
15 refers to Appendix A, but the remaining bullet
16 points do not refer to the appendix.
17 Do you know if any of the
18 calculations in the second through sixth bullet
19 point were being calculated on or before October
20 2, 2013?
21 MS. McENROE: Objection to form.
22 THE WITNESS: I believe some of
23 these were, again, part of the asset
24 protection KPIs, such as the trend

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1 percent, repeated downward cycle counts
2 were monitored by our asset protection
3 department.
4 BY MR. PIFKO:
5 Q. So you said from time to time the
6 asset protection department did identify certain
7 orders that it deemed to be suspicious?
8 MS. McENROE: Objection to form.
9 THE WITNESS: They identified
10 orders that were related to a theft or a
11 loss that occurred in a store.
12 BY MR. PIFKO:
13 Q. And those could be suspicious?
14 MS. McENROE: Objection to form.
15 THE WITNESS: They could be.
16 They couldn't be.
17 BY MR. PIFKO:
18 Q. Did they document those anywhere?
19 MS. McENROE: Objection to form.
20 THE WITNESS: They do. There's a
21 case file for each theft or loss that
22 asset protection maintains.
23 BY MR. PIFKO:
24 Q. And do they have a specific name?

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1 A. It was called NaviScript/Navi --
2 NaviScript/NaviCase.
3 Q. Okay. And it's all in that
4 database?
5 A. It is. And now it is moved to
6 LPMS.
7 Q. This project that's reflected in
8 Exhibit 12, 5046 suspicious order monitoring,
9 this was never actually implemented. Correct?
10 A. Correct.
11 Q. Why was not -- why wasn't it
12 implemented?
13 A. By the time the roll-out of the
14 project, by the time the roll-out of the project
15 would have been complete, Rite Aid would not have
16 been distributing controlled substances anymore.
17 Q. Are you familiar with Rite Aid's
18 decision to stop distributing Schedule III
19 controlled substances?
20 MS. McENROE: Objection to form.
21 THE WITNESS: I was familiar -- I
22 was provided information that Rite Aid
23 would stop distributing all drugs from
24 our distribution centers.

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1 BY MR. PIFKO:
2 Q. Were you part of the discussions
3 about the strategy for making that change?
4 MS. McENROE: Objection to form.
5 THE WITNESS: I was not.
6 BY MR. PIFKO:
7 Q. Do you know who was?
8 A. I would imagine our pharmacy
9 purchasing that owns the McKesson contract was.
10 Q. Do you know why Rite Aid made the
11 decision not to distribute controlled substances
12 on its own anymore?
13 MS. McENROE: Objection to form.
14 THE WITNESS: I do not. I was
15 not in the meeting.
16 BY MR. PIFKO:
17 Q. No one ever told you why Rite Aid
18 decided to stop distributing controlled
19 substances?
20 MS. McENROE: Objection to form.
21 THE WITNESS: I never had a
22 discussion, a formal discussion about why
23 Rite Aid stopped distributing controlled
24 substances.

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1 MR. PIFKO: All right. Subject
2 to any direct examination your counsel
3 may have, I don't have any other
4 questions at this time.
5 MS. McENROE: Thanks. Let's take
6 a quick break and then we'll be back.
7 MR. PIFKO: Going off the record
8 at 4:17 p.m.
9 - - -
10 (A recess was taken from
11 4:17 p.m. to 4:42 p.m.)
12 - - -
13 THE VIDEOGRAPHER: We're back on
14 the record at 4:42 p.m.
15 - - -
16 EXAMINATION
17 - - -
18 BY MS. McENROE:
19 Q. Good afternoon, Ms. Hart. You
20 understand my name is Elisa McEnroe. I'm counsel
21 for Rite Aid in this matter?
22 A. I do.
23 Q. I have a couple questions for
24 you.

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1 Do you remember earlier today you
2 were asked some questions about the auto
3 replenishment system?
4 A. I do.
5 Q. And you were asked some questions
6 specifically about the concept of a manual
7 override to that system?
8 A. Yes.
9 Q. And you testified that there was
10 a 99-bottle block to manual overrides in that
11 system.
12 Do you remember that?
13 A. I do.
14 MR. PIFKO: Objection, leading.
15 BY MS. McENROE:
16 Q. Are there any other blocks in the
17 manual override process of the auto replenishment
18 system?
19 A. There are -- there is a block.
20 The algorithm takes the on-hand quantity, looks
21 [REDACTED]
22 [REDACTED] The pharmacist has the ability
23 to increase that suggested order [REDACTED]
24 [REDACTED]

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1 quantity.
2 Q. I'd like to direct your attention
3 to Exhibit 3 from today's deposition.
4 Do you have that in front of you?
5 A. I do.
6 Q. Do you remember being asked about
7 this document earlier today?
8 A. I do.
9 Q. And you mentioned in the middle
10 email on this document that "We are looking to
11 provide the DC a better understanding of our
12 replenishment parameters so they can utilize that
13 as part of their response," et cetera.
14 Do you see that?
15 A. I do.
16 Q. And then you were asked some
17 questions about a meeting you had with others at
18 Rite Aid regarding Rite Aid's suspicious order
19 monitoring program.
20 Do you remember those questions?
21 A. Yes.
22 Q. I'm going to mark Exhibit 14.
23 - - -
24 (Deposition Exhibit No.

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1 Hart-30(b)(6)-14, Handwritten notes,
2 11/23/10, Bates stamped
3 Rite_Aid_OMDL_0046066, was marked for
4 identification.)
5 - - -
6 BY MS. McENROE:
7 Q. Do you recognize this document?
8 A. I do.
9 Q. What is this document?
10 A. It is an outline of a meeting
11 that was held on 11/23/10 on suspicious order
12 monitoring.
13 Q. Is this the meeting you were
14 referencing in your testimony earlier today
15 regarding suspicious order monitoring?
16 A. It was.
17 Q. And what you have listed here,
18 you have at the bottom some names.
19 A. Those were attendees, Maggie
20 Perritt, Kevin Mitchell, Andy Palmer and myself.
21 Q. And is that your handwriting?
22 A. This is, yes.
23 - - -
24 (Deposition Exhibit No.

| Page 278 | Page 280 |
|---|---|
| <p>1 Hart-30(b)(6)-15, PowerPoint slides, 2 Bates stamped Rite_Aid_OMDL_0046067 3 through Rite_Aid_OMDL_0046072, was marked 4 for identification.) 5 - - - 6 BY MS. McENROE: 7 Q. I hand you what I've marked as 8 Exhibit 15. 9 Do you recognize this document? 10 A. I do. 11 Q. What is it? 12 A. It was a document that was 13 brought back from a Buzzeeo meeting on suspicious 14 order monitoring that was discussed by the group. 15 Q. And when you say "discussed by 16 the group," are you talking about the meeting 17 that was referenced in Exhibit 14? 18 A. Yes. 19 Q. And you say it was brought back 20 from a Buzzeeo conference. 21 Who brought it back? 22 A. I believe Kevin Mitchell. 23 Q. Do you remember whether the 24 group, as you called it, discussed the entirety</p> | <p>1 to? 2 A. That was referring to the meeting 3 that Andy Palmer, Kevin Mitchell, Maggie Perritt 4 and myself had originally to start discussing 5 suspicious order monitoring. 6 Q. And is that the meeting reflected 7 as Exhibit 14 we were just discussing? 8 A. Yes. 9 Q. It then goes on to say, "We will 10 meet again 12/14 to follow-up on initial action 11 plans." 12 Do you see that? 13 A. I do. 14 Q. Did that group in fact meet again 15 in December to discuss suspicious order 16 monitoring? 17 MR. PIFKO: Objection to form. 18 THE WITNESS: We did. 19 BY MS. McENROE: 20 Q. You can answer. 21 A. We did. 22 - - - 23 (Deposition Exhibit No. 24 Hart-30(b)(6)-17, Handwritten notes,</p> |
| Page 279 | Page 281 |
| <p>1 of this presentation during the meeting? 2 A. We did. 3 - - - 4 (Deposition Exhibit No. 5 Hart-30(b)(6)-16, Email dated 2010-12-10, 6 Bates stamped Rite_Aid_OMDL_0020381 and 7 Rite_Aid_OMDL_0020381, was marked for 8 identification.) 9 - - - 10 BY MS. McENROE: 11 Q. I'm going to hand you what I'm 12 marking as Exhibit 16. And in particular, I'd 13 like to direct your attention to the attachment, 14 which at the top says "Supply Chain Update -- 15 Mitchell December 10, 2010." 16 Do you see that? 17 A. I do. 18 Q. The second bullet point there 19 says, "Met with RX Corporate team discussing 20 Suspicious Order Monitoring and how to better our 21 program." 22 Did I read that correctly? 23 A. You did. 24 Q. Do you know what that's referring</p> | <p>1 12/14/10, Bates stamped 2 Rite_Aid_OMDL_0046065, was marked for 3 identification.) 4 - - - 5 (Phone interruption.) 6 - - - 7 BY MS. McENROE: 8 Q. Wait until the phone stops 9 ringing. Hold on one second. 10 Ms. Hart, I handed you what's 11 been marked as Exhibit Number 17. 12 A. Yes. 13 Q. Do you recognize this document? 14 A. Yes. 15 Q. Is this your handwriting? 16 A. This is my handwriting, yes. 17 Q. And it's dated December 14, 2010 18 at the top. Correct? 19 A. Correct. 20 Q. What does this document reflect? 21 A. It is my notes on the meeting on 22 suspicious monitoring that occurred on the 14th. 23 Q. Do you remember the conclusion 24 from that meeting?</p> |

| | |
|---|--|
| <p style="text-align: right;">Page 282</p> <p>1 A. The conclusion from the meeting 2 was that at this particular time we were going to 3 make no changes to our suspicious order 4 monitoring program. 5 - - - 6 (Deposition Exhibit No. 7 Hart-30(b)(6)-18, Email dated 2011-01-21, 8 Bates stamped Rite_Aid_OMDL_0020541 and 9 Rite_Aid_OMDL_0020542, was marked for 10 identification.) 11 - - - 12 BY MS. McENROE: 13 Q. I'm going to hand you what I have 14 marked as Exhibit 18. And again, as with 15 Exhibit 16, I'm going to direct you to the 16 attachment here, which is a supply chain update 17 document dated January 21, 2011. 18 Do you see that? 19 A. I do. 20 Q. And the very first bullet point 21 says, "Met with RX Corporate team discussing 22 Suspicious Order Monitoring and how to better our 23 program." 24 Do you see that?</p> | <p style="text-align: right;">Page 284</p> <p>1 process in writing so that DC's can explain if 2 ever questioned by DEA." 3 Did I read that correctly? 4 A. You did. 5 Q. And why was it that Maggie never 6 did that? 7 A. She had left the company. 8 MS. McENROE: I have no further 9 questions. Thank you. 10 MR. PIFKO: I don't think we have 11 questions, but let me just look at the 12 documents real quick. 13 MS. McENROE: Let's go off the 14 record real quick. 15 THE VIDEOGRAPHER: Going off the 16 record, 4:50 p.m. 17 - - - 18 (A recess was taken from 4:50 19 p.m. to 4:51 p.m.) 20 - - - 21 THE VIDEOGRAPHER: Back on the 22 record at 4:51 p.m. 23 24</p> |
| <p style="text-align: right;">Page 283</p> <p>1 A. I do. 2 Q. Do you know what that's in 3 reference to? 4 A. The meeting from the 10th -- the 5 14th that we had discussion about suspicious 6 order monitoring. 7 Q. And the document goes on to say, 8 "Tested current process and everything works as 9 described." 10 Do you recall that being 11 consistent with your takeaway from the meeting on 12 December 14th? 13 MR. PIFKO: Objection to form, 14 leading. 15 BY MS. McENROE: 16 Q. You may answer. 17 A. I do. 18 Q. And you were asked questions 19 earlier today about a Maggie in reference to 20 these meetings. 21 And who was that? 22 A. Maggie was an individual in 23 pharmacy operations. 24 Q. And it says, "Maggie to put</p> | <p style="text-align: right;">Page 285</p> <p>1 - - - 2 EXAMINATION 3 - - - 4 BY MR. PIFKO: 5 Q. I want to direct your attention 6 to Exhibit 15 that your counsel just introduced 7 to you. 8 For the record, it's a multi-page 9 document, Bates labeled Rite_Aid_OMDL_004607 10 through 46072. 11 Can you tell me what this is? 12 A. This was a PowerPoint 13 presentation that was brought back to Rite Aid 14 from Kevin Mitchell when he attended the 15 suspicious order monitoring Buzzeeo in November of 16 2010. 17 Q. You testified yesterday that 18 Cegedim is an industry leader on suspicious order 19 monitoring; is that correct? 20 MS. McENROE: Objection to form. 21 THE WITNESS: They are one of the 22 industry leaders, yes. 23 BY MR. PIFKO: 24 Q. And you relied on their guidance</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 286</p> <p>1 in evaluating your suspicious order monitoring 2 system. Correct? 3 MS. McENROE: Objection to form. 4 THE WITNESS: We reviewed the 5 PowerPoint and then determined that our 6 suspicious order monitoring program had 7 all of the pieces to continue as we had 8 it. 9 BY MR. PIFKO: 10 Q. And so Mr. Mitchell was at this 11 particular conference? 12 A. Yes. 13 Q. And then he came back and brought 14 the slides to you, and you had a discussion about 15 it? 16 A. Yes. 17 Q. I'm going to direct you to the 18 page Bates labeled Rite_Aid_OMDL_0046070. Tell 19 me when you're there. 20 A. I am there. 21 Q. There's a slide here, the top 22 slide, the top heading on it is "Common SOM 23 Pitfalls," suspicious order monitoring pitfalls. 24 Do you see that?</p> | <p style="text-align: right;">Page 288</p> <p>1 to remain as it was. 2 BY MR. PIFKO: 3 Q. Did you specifically discuss the 4 Cegedim's guidance on cutting orders when you had 5 this meeting with Mr. Mitchell? 6 A. I don't recall if it was 7 discussed in detail. The PowerPoint was 8 discussed, yes. 9 Q. Okay. But do you recall if that 10 slide was discussed? 11 A. I don't recall. 12 Q. Who else was in this meeting 13 again? 14 A. This meeting was Maggie Perritt, 15 Andy Palmer, Kevin Mitchell and myself. 16 Q. And you decided not to make any 17 changes after having this meeting and discussing 18 these slides. Correct? 19 A. We did. 20 MR. PIFKO: Okay. No further 21 questions. 22 MS. McENROE: Thank you. That 23 concludes the 30(b)(6) deposition of Ms. 24 Hart.</p> |
| <p style="text-align: right;">Page 287</p> <p>1 A. I do. 2 Q. It says, "'Threshold' based 3 systems are not sufficient." 4 Do you see that? 5 A. Yes. 6 Q. And then it says underneath, 7 "'Cutting' orders to a volume that puts the order 8 under a threshold is not acceptable." 9 Do you see that? 10 A. I do. 11 Q. "DEA has previously stated on 12 this topic, 'that's like saying a little bit of 13 diversion is okay.'" 14 Do you see that? 15 A. I do. 16 Q. But you never made any changes to 17 the system after seeing that? 18 MS. McENROE: Objection to form. 19 THE WITNESS: We did not make any 20 changes simply because cutting an order 21 to 5,000 dosage units was only one part 22 of our suspicious order monitoring 23 program, and along with the algorithms 24 and the asset protection part, we decided</p> | <p style="text-align: right;">Page 289</p> <p>1 THE VIDEOGRAPHER: Going off the 2 record. The time is 4:55 p.m. 3 (Witness excused.) 4 (Deposition concluded at 5 approximately 4:55 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> |

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1
2 CERTIFICATE
3
4
5 I HEREBY CERTIFY that the witness
6 was duly sworn by me and that the deposition is a
7 true record of the testimony given by the
8 witness.
9
10 It was requested before
11 completion of the deposition that the witness,
12 JANET GETZEY HART, have the opportunity to read
13 and sign the deposition transcript.
14
15 _____
16 ANN MARIE MITCHELL, a Federally
17 Approved Certified Realtime
18 Reporter, Registered Diplomat
19 Reporter, Registered Merit Reporter and
20 Notary Public
21
22 (The foregoing certification of
23 this transcript does not apply to any
24 reproduction of the same by any means, unless
under the direct control and/or supervision of
the certifying reporter.)

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1 INSTRUCTIONS TO WITNESS
2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the appropriate
6 space on the errata sheet for any corrections
7 that are made.
8 After doing so, please sign the
9 errata sheet and date it.
10 You are signing same subject to
11 the changes you have noted on the errata sheet,
12 which will be attached to your deposition.
13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt of
16 the deposition transcript by you. If you fail to
17 do so, the deposition transcript may be deemed to
18 be accurate and may be used in court.
19
20
21
22
23
24

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1 - - - - -
2 E R R A T A
3 - - - - -
4 PAGE LINE CHANGE
5 _____
6 REASON: _____
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1
2 ACKNOWLEDGMENT OF DEPONENT
3
4 I, _____, do
5 hereby certify that I have read the foregoing
6 pages, 1 - 293, and that the same is a correct
7 transcription of the answers given by me to the
8 questions therein propounded, except for the
9 corrections or changes in form or substance, if
10 any, noted in the attached Errata Sheet.
11
12
13 _____
14 JANET GETZEY HART DATE
15
16
17 Subscribed and sworn
18 to before me this
19 _____ day of _____, 20____.
20 My commission expires: _____
21
22 _____
23 Notary Public
24